United States Court of Appeals for the Second Circuit

JOINT APPENDIX

77-7019

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P/S

United States Court of Appeals

For the Second Circuit.

PAUL G. GARRITY,
Plaintiff,
and
GARRITY INDUSTRIES, INC.,
Plaintiff-Appellant-Cross-Appellee,
against
SOCIETE LES PILES WONDER,
Defendant-Appellee-Cross-Appellant,
and
WONDER CORPORATION OF AMERICA,
Defendant.

ON APPEAL AND CROSS-APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

UNITED STATES COURT OF APPEALS
FILED
MAR 1 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX.

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(1022)

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Plaintiff's Exhibits:

		Admitted page	Printed page
1.	Letter dated August 25, 1972	62a	532a
2.	Letter dated October 6, 1972	64a	533a
3.	Telex No. 132	68a	535a
4.	Letter dated November 2, 1972	69a	536a
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8.	Letter dated December 12, 1972	79a	540a
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11.	Letter dated January 25, 1973	90a	544a
12.	Invoice No. 8827	142a	545a
13.	Debit Memo No. 7872	169a	567a

DEFENDANT'S EXHIBITS:

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A.	Letter dated July 21, 1972	101a	571a
D.	Letter dated January 5, 1973	129a	573a
E.	Sales Bulletin No. 82	194a	575a
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G-1.	Invoice dated March 30, 1972	280a	577a
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G-5.	Invoice dated April 24, 1972	280a	581a
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Relevant Docket Entries.

UNITED STATES DISTRICT COURT,

District of Connecticut.

Civil No. 15,922

Paul G. Garrity and Garrity Industries, Inc.,
Plaintiffs,
against

Societe Les Piles Wonder and Wonder Corporation of America,
Defendants.

Date	Proceedings
11/28/73	Complaint, Notice to Clerk, Demand for Jury Trial, Motion for Preliminary Injunction and Memorandum of Law in Support of Motion, filed. Summons issued.
12/19/73	Answer and Counterclaims of Defendant Wonder, filed.
2/ 7/74	Reply, filed by plaintiffs.
9/13/76	Stipulation and Order, filed and entered. First, second, third and fourth claims for relief and third and fourth counterclaims are dismissed, with prejudice, without costs; second counterclaim demanding damages is dismissed with prejudice to deft Societe Les Piles Wonder and without costs; and said second counterclaim hereafter be deemed to seek damages in the amount of $25,400.00; and plaintiff Paul G. Garrity and deft. Wonder Corp. of America be and same hereby are

	dismissed as parties to this action; except that the caption of this action shall remain as set forth above. Newman, J. m-9/13/76. Copies mailed to counsel.
9/21/76	Jury Trial Commences. Murphy, J., Sitting by designation.
10/14/76	Jury Trial Continues.
10/15/76	Jury Trial Continues.
10/18/76	Jury Trial Continued.
10/21/76	Judgment filed and entered.
11/ 1/76	Motion pursuant to Rule 59(e) to amend judgment entered 10/21/76 filed by plaintiff.
11/12/76	Cross Motion Pursuant to Rule 59(e) to Alter or Amend the Judgment, filed by Defendant, Societe Les Piles Wonder.
12/15/76	Memorandum of Decision filed *re:* Motion to amend judgment.
1/10/77	Notice of appeal filed by plaintiff.
1/20/77	Notice of Cross Appeal, filed by defendant.

COMPLAINT (PAGES 3a TO 19a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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PAUL G. GARRITY and GARRITY INDUSTRIES, INC., :
: 15922
Plaintiffs,
: COMPLAINT
-against-
: PLAINTIFFS DEMAND A TRIAL BY JURY
SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA, :

Defendants. :

- x

Plaintiffs, Paul G. Garrity and Garrity Industries, Inc., by their attorneys, Dunn, Lynch & RisCussi, for their complaint herein allege:

1. Plaintiff Paul G. Garrity is a resident of the City of Stamford, County of Fairfield, State of Connecticut and is the chairman of the board, president and controlling shareholder of plaintiff Garrity Industries, Inc.

2. Plaintiff Garrity Industries, Inc. ("Garrity Industries") is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Stamford, Connecticut.

3. Defendant Societe Les Piles Wonder ("Wonder") is a corporation organized and existing under the laws of the Republic of France and is doing and transacting business in and is found and has an agent in the District of Connecticut.

4. Defendant Wonder Corporation of America ("Wonder (U.S.)") is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Stamford, Connecticut, and is the wholly owned subsidiary of defendant Wonder.

5. The jurisdiction of this Court is invoked under the provisions of 15 U.S.C. §§ 1121, 1116, 72 and the principles of pendent jurisdiction. The action arises under 15 U.S.C. §§ 1114, 1124, 72 and principles of common law. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00.

FIRST CLAIM FOR RELIEF

6. This claim for relief is made under the provisions of 15 U.S.C. 66 1114(1)(a), 1124 and 1116, for damages and injunctive relief, both preliminary and permanent, for defendants' unauthorized use in commerce of a copy of Paul G. Garrity's registered trademark, "dispoz-a-lamp", in connection with the sale, offering for sale, distribution and advertising of disposable flashlights.

7. Repeat and reallege each and every allegation contained in paragraphs 1 through 5 of this complaint as if set forth at length herein.

8. The trade and commerce involved herein is the manufacture, distribution and sale of disposable flashlights in the United States.

9. Paul G. Garrity owns the trademark "Dispoz-a-lamp", which was registered in the Principal Register of Trademarks on January 20, 1970 with the number 884509, and Garrity Industries has been and is presently authorized and licensed to use this trademark.

10. In November of 1968, Garrity Industries and Wonder entered into an oral agreement pursuant to which Garrity Industries agreed to act as distributor in the United States, Canada and Puerto Rico, for three cell disposable flashlights manufactured by Wonder. The agreement also provided, among other things, that Garrity Industries would purchase and market in the United States three cell disposable flashlights produced by Wonder under Paul G. Garrity's registered trademark, "Dispoz-a-lamp."

11. Commencing in November of 1968, Garrity Industries began purchasing three cell disposable flashlights from Wonder and from that time until July, 1972 purchased a total of 4,300,000 disposable flashlights from Wonder. Each such disposable flashlight was emboseed by Wonder with Paul G. Garrity's registered trademark "Dispoz-a-lamp" as well as with Garrity Industries' name and trade name, "Garland". In addition, Wonder packaged the disposable flashlights in displays bearing Paul G. Garrity's registered trademark "Dispoz-a-lamp" and Garrity Industries' name and trade name, "Garland", which were thereafter used by Garrity Industries in selling

the disposable flashlights to distributors and the general public.

12. Commencing in July of 1972, Garrity Industries began to receive quantitites of returned and defective disposable flashlights from its customers, the large majority of which had defective switches. Plaintiffs immediately notified Wonder of these defects and complaints and Wonder admitted that it had had similar problems with its flashlights in other markets. Furthermore, Garrity Industries, at great expense, stopped shipping disposable flashlights to its customers.

13. Over the course of the next year, 152,710 disposable flashlights were returned to Garrity Industries by its customers, the large majority of which also had defective switches, which were thereafter returned to Wonder.

14. Prior to returning the aforesaid flashlights to Wonder, Paul G. Garrity, Garrity Industries, Wonder and Wonder (U.S.) agreed that Paul G. Garrity's trademark "Dispoz-a-lamp", as well as Garrity Industries' trade name, "Garland", would be eradicated from the flashlights before either Wonder or Wonder (U.S.) attempted to resell them or make other use of them.

15. Defendants Wonder and Wonder (U.S.) are selling to wholesale distributors throughout the United States disposable flashlights which, although not bearing Paul G.

Garrity's trademark and Garrity Industries' name and trade name, are being marketed by defendants in displays designed for and used by Garrity Industries. Each of these displays bears Paul G. Garrity's registered trademark and Garrity Industries' name and trade name.

16. The aforesaid use by defendants of Paul G. Garrity's registered trademark and Garrity Industries' name and trade name was and is being made without the consent of plaintiffs.

17. Defendants' unauthorized use of Paul G. Garrity's trademark and Garrity Industries' name and trade name is likely to cause, has caused, and will continue to cause confusion and mistake among and to deceive the public.

18. By reason of the fact that these disposable flashlights are being marketed as products of Garrity Industries, any of the aforesaid disposable flashlights which are still defective will be returned to Garrity Industries and the reputation of Garrity Industries in the market place will suffer irreparable injury.

19. By using Paul G. Garrity's registered trademark, without his consent, in commerce in connection with the sale, offering for sale, distribution and advertising of disposable flashlights, defendants have violated 15 U.S.C. §§ 1114(1)(a) and 1124.

20. By reason of the foregoing, plaintiffs are

entitled to collect their monetary damages in an amount not less than $1,000,000 and are entitled to injunctive relief, both preliminary and permanent, enjoining defendants from using Paul G. Garrity's registered trademark in the future.

SECOND CLAIM FOR RELIEF

21. This claim for relief is made under the provisions of 15 U.S.C. §§ 1114(1)(b), 1124 and 1116, for damages and injunctive relief, both preliminary and permanent, for defendants' unauthorized reproduction and copying Paul G. Garrity's registered trademark and applying said mark to packages and displays intended to be used for or in connection with the sale, offering for sale, distribution and advertising of disposable flashlights.

22. Repeat and reallege each and every allegation contained in paragraphs 1 through 20 of this complaint as if set forth herein at length.

23. Defendants have copied Paul G. Garrity's registered trademark "Dispoz-a-lamp" and applied it to packaging and displays.

24. Defendants intend to use the aforesaid copies of Paul G. Garrity's registered trademark "Dispoz-a-lamp" in commerce upon or in connection with the sale, offering for sale, distribution or advertising of disposable flashlights.

25. Defendants' unauthorized use of Paul G. Garrity's registered trademark is likely to cause confusion

or mistake among or will deceive the public.

26. Defendants have copied Paul G. Garrity's registered trademark with the knowledge and intent that the use of said copies will cause confusion or mistake among or will deceive the public.

27. Defendants foregoing unauthorized copying of Paul G. Garrity's registered trademark is a violation of 15 U.S.C. §§ 1114(1)(b) and 1124.

28. By reason of the foregoing, plaintiffs are entitled to recover their damages in an amount not less than $1,000,000 and are entitled to injunctive relief, both preliminary and permanent, enjoining defendants from copying or using Paul G. Garrity's registered trademark in the future.

THIRD CLAIM FOR RELIEF

29. This claim for relief is made under the provisons of 15 U.S.C. § 72 for damages arising out of defendants' importation of disposable flashlights into the United States and sale of those disposable flashlights in the United States at a price substantially less than the actual market value and wholesale price of such disposable flashlights.

30. Repeat and reallege each and every allegation contained in paragraphs 1 through 28 of this complaint as if set forth herein at length.

31. Wonder is in the business of manufacturing electrical batteries, flashlights and disposable flashlights.

32. Wonder (U.S.) was established by Wonder in 1971 as the importer and distributor of Wonder's electrical batteries, flashlights and disposable flashlights in the United States.

33. In or about June of 1973, Wonder and Wonder (U.S.) conspired to import and sell and commenced importing into and selling in the United States disposable flashlights at prices as low as thirty-five cents ($.35) per flashlight and have been commonly and systematically doing so since June of 1973.

34. The actual market value and wholesale price of the aforesaid disposable flashlights is approximately eighty-one cents ($.81) per flashlight.

35. Defendants have been importing and selling the aforesaid disposable flashlights at prices as low as thirty-five cents ($.35) with the intent of destroying or injuring the industry of disposable flashlights in the United States and with the intent of restraining or monopolizing the trade and commerce of disposable flashlights in the United States.

36. By reason of the foregoing, plaintiffs have suffered, and are continuing to suffer, injury to their business and property and are entitled to recover threefold their damages, in an amount not less than $1,000,000, to the date of the trial of this action.

GARRITY INDUSTRIES' FOURTH CLAIM FOR RELIEF

37. This claim for relief is made under common law principles and principles of pendent jurisdiction.

38. Repeats and realleges each and every allegation contained in paragraphs 1 through 36 of this complaint as if set forth herein at length.

39. The disposable flashlights being imported into and sold in the United States by defendants are identical to those which Garrity Industries sold for four years in the United States except that Garrity Industries' name and trade name and Paul G. Garrity's registered trademark have been removed.

40. Defendants are selling the aforesaid disposable flashlights in displays which are identical to those which had been designed for and used by Garrity Industries. Each said display bears Garrity Industries' name and trade name and Paul G. Garrity's registered trademark. Defendants commenced and are using the aforesaid displays without the knowledge or consent of plaintiffs. Each of the aforesaid displays is distinctive and is clearly associated with Garrity Industries and its disposable flashlights.

41. Garrity Industries is currently marketing, and intends to continue to market, disposable flashlights in displays containing its name and trade name and Paul G. Garrity's registered trademark.

42. Many of the disposable flashlights being sold by defendants may still have defective switches.

43. Wholesale and retail purchasers and consumers are and, in the future, will be, confused by defendants' displays and unable to discriminate between Garrity Industries' disposable flashlights and those of defendants. Defendants' conduct tends to and does deceive the public, injures Garrity Industries' good will and causes Garrity Industries to lose its market in disposable flashlights.

44. Defendants' purpose, through their unauthorized use of Garrity Industries' name, trade name, and displays and their unauthorized use of Paul G. Garrity's registered trademark, is to siphon off Garrity Industries' customers and to destroy Garrity Industries' business in disposable flashlights by palming off their disposable flashlights as those of Garrity Industries.

45. Defendants have, in fact, by their said unfair and deceptive practices deceived the public into purchasing defendants' disposable flashlights as those of Garrity Industries, which the public really intended to purchase. As a result, Garrity Industries will lose a substantial part of its market for disposable flashlights and will inevitably receive complaints and the return of defendants' defective flashlights from the purchasers.

46. Garrity Industries has no adequate remedy at law.

47. By reason of the foregoing, Garrity Industries is entitled to recover its damages, in an amount not less than $1,000,000, and is entitled to injunctive relief, both preliminary and permanent, enjoining defendants from palming off their disposable flashlights as those of Garrity Industries.

GARRITY INDUSTRIES' FIFTH CLAIM FOR RELIEF AGAINST WONDER

48. This claim for relief is made under common law principles, the Uniform Commercial Code and principles of pendent jurisdiction.

49. Repeats and realleges each and every allegation contained in paragraphs 1 through 47 of this complaint as if set forth herein at length.

50. During the period March 30, 1972 through July 3, 1972, Garrity Industries purchased 481,320 disposable flashlights from Wonder.

51. Garrity Industries purchased said disposable flashlights for resale to retailers for ultimate sale to the general public, facts which were known to Wonder at the time it sold the aforesaid disposable flashlights to Garrity Industries.

52. Wonder, knowing the aforesaid facts, represented and impliedly warranted that the aforesaid disposable flashlights were suitable for the purpose for which they

were intended and that they would give good service and were well constructed and of the best manufacture.

53. Unknown to Garrity Industries and known to Wonder, said disposable flashlights were not suitable for the purpose for which they were intended, did not give good service and were not well constructed or of the best manufacture, in that the switch on many, if not all, of said disposable flashlights was defective and broke on use.

54. The aforesaid defect was latent and was not discovered by Garrity Industries in that the switch broke only after being turned on several times.

55. Garrity Industries sold the aforesaid 481,320 disposable flashlights to retail establishments throughout the United States.

56. Commencing in the summer of 1972, the aforesaid defective disposable flashlights began to be returned to Garrity Industries by retail establishments and individual members of the general public.

57. Up to the present time, Garrity Industries has received returns of 152,710 disposable flashlights which it has returned to defendant Wonder, and Garrity Industries is continuing to receive returns of approximately 200 disposable flashlights per week.

58. Upon discovery of the aforesaid defect in the disposable flashlights sold to it by Wonder, Garrity Industries

elected to withhold payment for those disposable flashlights as an offset against its damages and to return disposable flashlights which it received as returns to defendant Wonder.

59. By reason of the foregoing, Garrity Industries is entitled to recover its damages, including lost profits, to the date of the trial of this action. Garrity Industries' damages presently total $135,000.

GARRITY INDUSTRIES' SIXTH CLAIM FOR RELIEF AGAINST WONDER

60. This claim for relief is made under common law principles, the Uniform Commercial Code and principles of pendent jurisdiction.

61. Repeats and realleges each and every allegation contained in paragraphs 1 through 59 of this complaint as if set forth herein at length.

62. The agreement between Garrity Industries and Wonder provided that Wonder would deliver first quality disposable flashlights which were free from defects.

63. Garrity Industires has performed all of the terms and conditions of the contract between itself and Wonder by it to be performed, except that it has withheld payment and has offset the amount which it owes Wonder against the damages it has suffered and is continuing to suffer.

64. Wonder has breached the aforesaid contract by delivering disposable flashlights which were not of first

quality and were defective.

65. By reason of the foregoing, Garrity Industries is entitled to recover its damages including lost profits, to the date of trial. Garrity Industries' damages presently total $135,000.

WHEREFORE, plaintiffs demand and pray:

A. That defendants' unauthorized use of Paul G. Garrity's registered trademark in connection with the sale, offering for sale, distribution and advertising of disposable flashlights, as alleged in the First Claim for Relief, be adjudged and decreed to be in violation of 15 U.S.C. §§ 1114(1)(a) and 1124.

B. That defendants be preliminarily and permanently enjoined from their unauthorized use of Paul G. Garrity's registered trademark in connection with the sale, offering for sale, distribution and advertising of disposable flashlights, as alleged in the First Claim for Relief.

C. That plaintiffs recover their damages, in an amount not less than $1,000,000, resulting from defendants' unauthorized use of Paul G. Garrity's registered trademark in connection with the sale, offer for sale, distribution and advertising of disposable flashlights, as alleged in the First Claim for Relief.

D. That defendants' unauthoirzed reproduction and copying of Paul G. Garrity's registered trademark and applying said mark to packages and displays to be used for or in connection with the sale, offering for sale, distribution and advertising of disposable flashlights, as alleged in the Second Claim for Relief, be adjudged and decreed to be in violation of 15 U.S.C. §§ 1114(1)(b) and 1124.

E. That defendants be preliminarily and permanently enjoined from their unauthorized reproduction and copying of Paul G. Garrity's registered trademark and be further preliminarily and permanently enjoined from using that registered trademark for or in connection with the sale, offering for sale, distribution or advertising of disposable flashlights, as alleged in the Second Claim for Relief.

F. That plaintiffs recover damages, in an amount not less than $1,000,000, resulting from defendants' unauthorized reproduction and copying of Paul G. Garrity's registered trademark and applying said mark to packages or displays to be used for or in connection with the sale, offering for sale, distribution and advertising of disposable flashlights, as alleged in the Second Claim for Relief.

G. That defendants' importation of disposable flashlights into and sale of disposable flashlights in the United States at a price substantially less than the actual market value and wholesale price of such disposable flashlights, as alleged in the Third Claim for Relief, be adjudged and decreed to be in violation of 15 U.S.C. § 72.

H. That plaintiffs recover threefold their damages, in an amount not less than $1,000,000, resulting from defendants' importation of disposable flashlights into and sale of disposable flashlights in the United States at a price substantially less than the actual market value and wholesale price of such disposable flashlights, as alleged in the Third Claim for Relief.

I. That defendants be preliminarily and permanently enjoined from palming off their products as those of Garrity Industries, as alleged in the Fourth Claim for Relief.

J. That Garrity Industries recover its damages, in an amount not less than $1,000,000, resulting from defendants palming off their products as those of Garrity Industries, as alleged in the Fourth Claim for Relief.

K. That Garrity Industries recover its damages, which at the present time equal $135,000, to the date of trial resulting from defendant Wonder's breach of the implied warranties of fitness for intended purpose and quality, as alleged in the Fifth Claim for Relief.

L. That Garrity Industries recover its damages, which at the present time equal $135,000, to the date of trial resulting from defendant Wonder's breach of contract as alleged in the Sixth Claim for Relief.

M. That plaintiffs recover such other and further relief as may be just together with the costs and disbursements of this action.

DUNN, LYNCH & RISCUSSI

By______________________________
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Pursuant to Rule 38(b), Federal Rules of Civil Procedure, plaintiffs hereby demand a trial by jury in this action.

ANSWER WITH COUNTERCLAIMS (PAGES 20a TO 35a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

---x

PAUL G. GARRITY and GARRITY INDUSTRIES :
INC.,
:
Plaintiffs,
:
vs. : 15922
:
SOCIETE LES PILES WONDER and
WONDER CORPORATION OF AMERICA, :

Defendants. :

---x

ANSWER WITH COUNTERCLAIMS

Defendants Societe Les Piles Wonder and Wonder Corporation of America by their attorneys Tierney, Zullo, Flaherty & Cioffi for their answer to the complaint herein and counterclaims against plaintiffs allege as follows:

1. Defendants admit the allegations of paragraph 1 of the complaint.

2. Defendants admit the allegations of paragraph 2 of the complaint.

3. Defendant Societe Les Piles Wonder ("Wonder') admits that it is a corporation organized and existing under the laws of the Republic of France but otherwise denies the allegations in paragraph 3 of the complaint.

4. Defendant Wonder Corporation of America ("Wonder U.S.") admits the allegations of paragraph 4 of the complaint.

5. Defendants deny the allegations of paragraph 5 of the complaint.

ANSWER TO THAT PART OF THE COMPLAINT DESIGNATED FIRST CLAIM FOR RELIEF

6. Defendants deny the allegation of paragraph 6 of the complaint.

7. Defendants repeat and we allege the admissions, denials and other allegations contained in paragraphs 1 through 5 hereof as if set forth at length herein.

8. Defendants admit the allegations of paragraph 8 of the complaint.

9. Defendants admit that plaintiff Paul G. Garrity is a registered owner of the trademark "Dispoz-a-lamp". The defendants have no information sufficient to form a belief as to the other allegations of paragraph 9 of the complaint and therefore denies the same.

10. Defendant Wonder admits the allegations of paragraph 10 of the complaint except that it denies that Canada was part of the agreement of November, 1968.

11. Defendant Wonder admits the allegations of paragraph 11 of the complaint except that the total number of flashlights purchased from Wonder was far in excess of 4,300,000.

12. Defendant Wonder admits that sometime in 1972 plaintiff Garrity Industries received quantities of defective

disposable flashlights from its customers and admits that it notified Wonder of these defects, but otherwise defendant Wonder denies the allegations of paragraph 12 of the complaint.

13. Defendant Wonder admits that over the course of the next year a substantial number of disposable flashlights were returned to plaintiff Garrity Industries by its customers which were thereafter returned to defendant Wonder, but otherwise defendant denies the allegations of paragraph 13 of the complaint.

14. Defendants admit the allegations of paragraph 14 of the complaint.

15. Defendants deny the allegations of paragraph 15 of the complaint.

16. Defendants deny that they have used the registered trademark of Paul G. Garrity and the trade name of Garrity Industries and therefore deny the allegations of paragraph 16 of the complaint.

17. Defendants deny the allegations of paragraph 17 of the complaint.

18. Defendants deny the allegations of paragraph 18 of the complaint.

19. Defendants deny the allegations of paragraph 19 of the complaint.

20. Defendants deny the allegations of paragraph 20 of the complaint.

ANSWER TO THAT PART OF THE COMPLAINT DESIGNATED SECOND CLAIM FOR RELIEF

21. Defendants admit that plaintiffs have invoked the provisions of 15 U.S.C. §§ 1114(1) (b), 1124 and 1116, but otherwise deny the allegations of paragraph 21 of the complaint.

22. Defendants repeat admissions, denials and other allegations contained in paragraphs 1 through 20 hereof as if set forth herein at length.

23. Defendants deny the allegations of paragraph 23 of the complaint.

24. Defendants deny the allegations of paragraph 24 of the complaint.

25. Defendants deny the allegations of paragraph 25 of the complaint.

26. Defendants deny the allegations of paragraph 26 of the complaint.

27. Defendants deny the allegations of paragraph 27 of the complaint.

28. Defendants deny the allegations of paragraph 28 of the complaint.

ANSWER TO THAT PART OF THE COMPLAINT DESIGNATED THIRD CLAIM FOR RELIEF

29. Defendants admit that plaintiffs have invoked the provisions of 15 U.S.C. § 72 but otherwise defendants deny the allegations of paragraph 29 of the complaint.

30. Defendants repeat admissions, denials and other

allegations contained in paragraphs 1 through 28 hereof as if set forth herein at length.

31. Defendant Wonder admits the allegations of paragraph 31 of the complaint.

32. Defendant Wonder U. S. admits the allegations of paragraph 32 of the complaint.

33. Defendants deny the allegations of paragraph 33 of the complaint.

34. Defendants deny the allegations of paragraph 34 of the complaint.

35. Defendants deny the allegations of paragraph 35 of the complaint.

36. Defendants deny the allegations of paragraph 36 of the complaint.

ANSWER TO THE PART OF THE COMPLAINT DESIGNATED GARRITY INDUSTRIES' FOURTH CLAIM FOR RELIEF

37. Defendants deny the allegations of paragrpah 37 of the complaint.

38. Defendants repeat admissions, denials and other allegations contained in paragraphs 1 thorugh 36 hereof as if set forth herein at length.

39. Defendants deny the allegations of paragraph 39 of the complaint.

40. Defendants deny the allegations of paragraph 40 of the complaint.

41. Defendants have no information sufficient to form a belief as to the truth of the allegations conatined in paragraph 41 of the complaint and therefore deny the same.

42. Defendants deny the allegations of paragraph 42 of the complaint.

43. Defendants deny the allegations of paragraph 43 of the complaint.

44. Defendants deny the allegations of paragraph 44 of the complaint.

45. Defendants deny the allegations of paragraph 45 of the complaint.

46. Defendants deny the allegations of paragraph 46 of the complaint.

47. Defendants deny the allegations of paragraph 47 of the complaint.

ANSWER TO THAT PART OF THE COMPLAINT DESIGNATED GARRITY INDUSTRIES' FIFTH CLAIM FOR RELIEF AGAINST WONDER

48. Defendant Wonder denies the allegations of paragraph 48 of the complaint.

49. Defendants repeat admissions, denials and other allegations contained in paragraphs 1 through 47 hereof as if set forth herein at length.

50. Defendants admit the allegations of paragraph 50 of the complaint except that it is not sufficiently informed at the present time to confirm the number of disposable flash-

lights alleged to have been purchased by Garrity Industries.

51. Defendant Wonder admits the allegations of paragraph 51 of the complaint.

52. Defendant Wonder admits the allegations of paragraph 52 of the complaint.

53. Defendant Wonder denies the allegations of paragraph 53 of the complaint.

54. Defendant Wonder admits the allegations of paragraph 54 of the complaint.

55. Defendant Wonder admits the allegations of paragraph 55 of the complaint, but is not in position to verify the number of flashlights sold to retail establishments throughout the United States.

56. Defendant Wonder admits that sometime in 1972 defective disposable flashlights began to be returned to Garrity Industries.

57. Defendant Wonder admits that Garrity Industries has received returns of disposable flashlights but is unable to verify the number; otherwise defendant Wonder has no information sufficient to support a belief as to the truth of the allegations of paragraph 57 and therefore denies the same.

58. Defendant Wonder admits that Garrity Industries has withheld payment for disposable flashlights purchased from defendant Wonder, but denies that such election constitutes a valid offset and denies that Garrity Industries has any damages.

59. Defendant Wonder denies the allegations of paragraph 59 of the complaint.

ANSWER TO THAT PART OF THE COMPLAINT DESIGNATED GARRITY INDUSTRIES' SIXTH CLAIM FOR RELIEF AGAINST WONDER

60. Defendant Wonder denies the allegations of paragraph 60 of the complaint.

61. Defendants repeat admissions, denials and other allegations contained in paragraphs 1 through 59 hereof as if set forth herein at length.

62. Defendant Wonder admits the allegations of paragraph 62 of the complaint.

63. Defendant Wonder denies the allegations of paragraph 63 of the complaint, except that it admits that Garrity Industries has withheld payment from Wonder.

64. Defendant Wonder denies the allegations of paragraph 64 of the complaint.

65. Defendants deny the allegations of paragraph 65 of the complaint.

FIRST COUNTERCLAIM OF DEFENDANT WONDER

66. Defendant Wonder is a corporation organized and existing under the laws of the Republic of France with its principal place of business at 77 Rue De Rosiers, 93-Saint Quen, France.

67. Plaintiff Garrity Industries is a corporation organized and existing under the laws of the State of Connecticut with its principal place of business in Stamford, Connecticut.

68. The amount in controversy exclusive of interest and costs exceeds the sum of $10,000.

68a. at all the times hereinafter mentioned, the average rate of exchange for French Francs approximated $1.00 for 5 French Francs.

69. On various dates in 1972, defendant Wonder sold and delivered to plaintiff Garrity Industries in France (F.O.B. Le Havre) at Garrity Industries' request, certain goods manufactured in France, the agreed consideration and description of which is as follows:

Invoice No.	Product	Amount (French Francs)
2309	Labels	178,00
2357	76,608 DISPO	102.578,11
2358	17,064 DISPO	23,753,09
2324	94,464 DISPO	126.487,29
2325	5,840 Displays	5.956,80
2328	30,672 DISPO	43.676.92
2329	40,032 DISPO	57.005,56
2330	93,024 DISPO	132.466,17
2401	21,312 DISPO	30.348,28

Invoice No.	Product	Amount (French Francs)
2500	83,520 DISPO	118.932,48
2501	24,624 DISPO	36.369,65
2502	3,000 Displays	3.060,00
	AMOUNT OUTSTANDING	680.812,35

for which Garrity Industries agreed to pay Wonder in French Francs within 120 days after date of delivery.

70. Garrity Industries has not paid said sums or any part thereof except for credits given to Garrity Industries on or about May 29, 1973 and October 22, 1973 respectively, in the sum of 234.293,73 French Francs covering the returns by Garrity Industries to Wonder of Dis-Poz-A-Lamps.

71. Garrity Industries is indebted to Wonder in the amount of 446.518,62 French Francs and, despite demand, has failed and refused to pay said sum to Wonder.

72. In addition, on or about February 9, 1973, Garrity Industries, based upon payment of a prior account under an inaccurate monetary exchange rate, is indebted to Wonder in the further sum of 12.533,92 French Francs.

73. By reason of the foregoing, Garrity Industries is indebted to Wonder in the amount of 459.052,54 French Francs, or $91,814.50.

SECOND COUNTERCLAIM OF DEFENDANT WONDER

74. Defendant Wonder repeats and re-alleges each

and every allegation contained in paragraphs 66 through 68 of the First Counterclaim as if set forth at length herein.

75. In or about November, 1968, Wonder and Garrity Industries entered into an agreement under the terms of which Garrity Industries agreed to purchase and market in the United States disposable flashlights manufactured by Wonder. Until the middle of July of 1972, Garrity purchased, pursuant to such agreement, more than 5 million disposable flashlights from Wonder. Each disposable flashlight was, pursuant to the agreement, embossed by Wonder with the registered trademark "Dispoz-a-lamp" as well as with identifications of Garrity Industries.

76. Based upon the needs of Garrity Industries, as indicated by the average demands experienced in the relationship with Garrity Industries, Wonder continued to stockpile disposable flashlights for sale to Garrity Industries. All of the stockpiled disposable flashlights, numbering som 211,000 were subsequently refused by Garrity Industries thereby requiring Wonder to incur great expense in obliterating the trademark and other identifications from such flashlights and in destroying packaging material prepared for such flashlights at a cost in excess of $16,000.

77. Furthermore, the failure of Garrity Industries to advise Wonder (in the period from July of 1972 to February, 1973) of its intention to make no further purchases from Wonder,

required Wonder to take into consideration the average monthly requirements of Garrity Industries in planning sales, so that Woncer was prevented, in such period, from seeking purchasers for more than one million disposable flashlights resulting in loss of profit in excess of $50,000 as well as expense incurred in the cost of displays and packaging for inventory which were subsequently destroyed in the approximate amount of $9,400.

78. By reason of the foregoing, Wonder has been damaged in an amount not less than $75,400.

THIRD COUNTERCLAIM OF DEFENDANT WONDER

79. Defendant Wonder repeats and re-alleges each and every allegation contained in paragraphs 66 through 68 of the First Counterclaim as if set forth at length herein.

80. Sometime in 1972 and possibly earlier, Garrity Industries made plans to discontinue the distribution in the United States of disposable flashlights made by Wonder and to introduce a competitive disposable flashlight of its own manufacture.

81. In order to facilitate the acceptance of its own disposable flashlight, Garrity Industries set out on a plan to destroy the competitiveness of Wonder by disparaging the disposable flashlights made by Wonder.

82. In accordance with its plan to destroy the competitiveness of Wonder by disparagement of product, Garrity

Industries published on March 15, 1973 in a leading trade publication, United States Tobacco Journal, an advertisement of Garrity Industries, in which a disposable flashlight known to the trade and public to be the product of Wonder was depicted in a manner calculated to hold it in disrepute and was described as "old" and "obsolete', among other disparaging words.

83. The disparaging publication in the United States Tobacco Journal on March 15, 1973 was timed to coincide with the National Convention of Tobacco Distributors, a major industry event, at which Garrity Industries had an exhibit booth.

84. Garrity Industries has continued to disparage the product of Wonder by repeating the malicious advertisement of March 15, 1973 and by word of mouth by plaintiff Paul G. Garrity and his sales representatives.

85. As the result of this malicious publication, oral and written, of disparagement of the product of Wonder, Wonder has had a great diminution in sales of its disposable flashlights. Prior to the publications authored by Garrity Industries, Wonder on the basis of experience, anticipated sales in the area of $1,500,000. Subsequent to such publications, Wonder's sales in disposable flashlights were only half of Wonder's expectations, the loss of business being attributable to the lack of any sales whatsoever to tobacco

distributors, a major field, and the particular one toward which Garrity Industries directed its disparaging publications.

86. By reason of the foregoing, Wonder has been damaged in an amount not less than $300,000.

FOURTH COUNTERCLAIM OF DEFENDANT WONDER

87. This counterclaim arises under the provisions of 15 U.S.C. §§1119 and 1121 and this Court has jurisdiction under the provisions of 25 U.S.C. § 1338(a). Defendant Wonder is a corporation organized and existing under the laws of the Republic of France.

88. Registration No. 884,509 for the claimed trademark "Dispoz-a-lamp" constitutes an illegally and unlawfully registered mark under the provisions of 15 U.S.C. Secs. 1051 and 1052(e) thereof in that (1) at the time of the filing of the application for registration of said mark, Serial No. 318773 on February 10, 1969, plaintiff Paul G. Garrity falsely swore that he was the owner of such mark, knowing the mark to be owned by plaintiff Garrity Industries; and (2) the words "Dispoz-a-lamp" were and are merely descriptive of the disposable falshlights sold by plaintiff Garrity Industries.

89. Since Registration No. 884,509 for the claimed trademark "Dispoz-a-lamp" has been unlawfully and illegally granted, such registration should be canceled under the authority granted to this Court under 15 U.S.C. § 1119.

WHEREFORE, defendants request judgment as follows:

A. That the complaint against both defendants be dismissed;

B. That defendant Wonder recover from plaintiff Garrity Industries on its first counterclaim an amount not less than $91,814.50 with interest from the time payment was due;

C. That defendant Wonder recover from plaintiff, Garrity Industries, on its second counterclaim damages in an amount not less than $75,400;

D. That Paul G. Garrity and plaintiffs, Garrity Industries, their agents, servants, and other representatives be preliminarily and permanently enjoined from publishing by way of advertising, promotional material, press releases, sales literature, and other writings or by word-of-mouth, disparaging statements about the products of defendant Wonder; and that defendant Wonder recover from plaintiff Garrity Industries on its third counterclaim an amount not less than $300,000;

E. That the Registration for the claimed mark, "DISPOZ-A-LAMP", Reg. No. 884,509, owned by plaintiff Paul G. Garrity be cancelled; and

F. The defendants be awarded the costs and disbursements and such other relief as the Court deems appropraite.

Dated at Norwalk, Connecticut, this 18th day of December, 1973.

THOMAS A. FLAHERTY
Attorney for the Defendants

This is to certify that the foregoing Answer with Counterclaims was mailed by U. S. Mail, postage prepaid this 18th day of december, 1973 to:

Philip R. Dunn, Esq.
215 Washington Street
Hartford, Connecticut 06106

Thomas A. Flaherty

REPLY (PAGES 36a TO 40a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

PAUL G. GARRITY and GARRITY :
INDUSTRIES, INC.,
:
Plaintiffs, : 15922
-against- : REPLY
:
SOCIETE LES PILES WONDER and
WONDER CORPORATION OF AMERICA, :
Defendants. :

- x

Plaintiffs, Paul G. Garrity and Garrity Industries, Inc., by their attorneys, Dunn, Lynch & RisCassi, for their reply to the counterclaims contained in defendants' answer allege:

1. Deny each and every allegation contained in paragraphs 68a, 71, 72, 73, 77, 78, 81, 84, 85 and 86 of the answer.

2. Deny each and every allegation contained in paragraph 69 of the answer except admit that, on various dates in 1972, Wonder sold and delivered to Garrity Industries in France (f.o.b. Le Havre) certain goods manufactured in France as described in paragraph 69 and specifically deny that the amounts alleged in paragraph 69 are correct and further specifically deny that said goods were to be paid for in French Francs.

3. Deny each and every allegation contained in paragraph 70 of the answer except admit that on or about May 29, 1973 and October 22, 1973 Garrity Industries returned a total of 152,710 disposable flashlights to defendants for which Wonder gave Garrity Industries credits totalling $62,611.10 and further admit that Garrity Industries has not otherwise paid Wonder the sums claimed.

4. Deny each and every allegation contained in paragraph 75 of the answer except admit that in or about November of 1968 Garrity Industries and Wonder entered into an oral agreement pursuant to which Garrity Industries agreed, among other things, to act as distributor in the United States, Canada and Puerto Rico for three cell disposable flashlights manufactured by Wonder and further admit that from November of 1968 through July of 1972 Garrity Industries purchased approximately 5,000,000 three cell disposable flashlights from Wonder and further admit that, pursuant to the aforesaid agreement, each of said three cell disposable flashlights was embossed by Wonder with Paul G. Garrity's registered trademark, "Dispoz-a-lamp", and with identifications of Garrity Industries.

5. Deny each and every allegation contained in paragraph 76 of the answer and specifically deny that Garrity Industries refused to purchase further disposable flashlights from defendant Wonder.

6. Deny each and every allegation contained in paragraph 80 of the answer except admit that in 1972 Garrity Industries made plans to introduce on the market a disposable flashlight of its own manufacture and specifically deny that Garrity Industries made plans to discontinue the distribution in the United States of disposable flashlights manufactured by Wonder.

7. Deny each and every allegation contained in paragraph 82 of the answer except admit that, on or about March 15, 1973, Garrity Industries announced, in the United States Tobacco Journal, a new and improved disposable flashlight which it was marketing.

8. Deny each and every allegation contained in paragraph 83 of the answer except admit that, on or after March 15, 1973 a National Convention of Tobacco Distributors was held and further admit that Garrity Industries had an exhibition booth at said convention.

9. Deny each and every allegation contained in paragraphs 88 and 89 of the answer except admit that Paul G. Garrity is the duly registered owner of the trademark "Dispoz-a-lamp", Registration No. 884,509, and further admit that said trademark was applied for by Paul G. Garrity on February 10, 1969, Serial No. 318773, in connection with which Paul G. Garrity swore that he was the owner of said mark.

FIRST AFFIRMATIVE DEFENSE TO THE FIRST AND SECOND COUNTERCLAIMS OF WONDER:

10. By reason of the acts of Wonder and Wonder (U.S.) as alleged in the complaint herein, Garrity Industries was entitled to withhold payment of all amounts claimed by Wonder and offset those amounts against damages suffered by plaintiffs as a result thereof.

FIRST AFFIRMATIVE DEFENSE TO THE THIRD COUNTERCLAIM OF WONDER:

11. The third counterclaim of Wonder fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE TO THE THIRD COUNTERCLAIM OF WONDER:

12. All statements made by Garrity Industries in the March 15, 1973 issue of the United States Tobacco Journal were and are true.

THIRD AFFIRMATIVE DEFENSE TO THE THIRD COUNTERCLAIM OF WONDER:

13. Repeats and realleges each and every allegation contained in paragraphs 11 and 12 of this reply as if set forth herein at length.

14. The product identified in Garrity Industries' advertisement in the March 15, 1973 issue of the United States Tobacco Journal was clearly identified as that of Garrity Industries and, as such, Garrity Industries was privileged to publish comment about it.

FOURTH AFFIRMATIVE DEFENSE TO THE THIRD COUNTERCLAIM OF WONDER:

15. Repeats and realleges each and every allegation contained in paragraphs 11, 12 and 14 of this reply as if set forth herein at length.

16. The statements made by Garrity Industries in its advertisement in the March 15, 1973 issue of the United States Tobacco Journal were fair comment and criticism on merchandise marketed by Garrity Industries and clearly identified as a product of Garrity Industries.

WHEREFORE plaintiffs demand judgment dismissing the counterclaims of defendant Wonder and such other and further relief as may be just and proper together with the costs and disbursements of this action.

DUNN, LYNCH & RISCASSI

By______________________________
A Member of the Firm
Attorneys for Plaintiffs
Office and Post Office Address
215 Washington Street
Hartford, Connecticut 06106
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Of counsel:

CASEY, LANE & MITTENDORF
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26 Broadway
New York, New York 10004
Telephone: (212) 943-3000

STIPULATION AND ORDER (PAGES 41a TO 43a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

--x

PAUL G. GARRITY and GARRITY INDUSTRIES, INC., :

Plaintiffs, : Judge Newman
Index No.
15922 Civil

-against- :

SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA, : STIPULATION AND ORDER

Defendants. :

--x

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the parties herein that, pursuant to Rules 16 and 41(a) and (c) of the Federal Rules of Civil Procedure, those claims for relief of the complaint herein designated as first, second, third and fourth claims for relief, and those claims for relief of the counterclaims herein designated as the third and fourth counterclaims be and the same hereby are dismissed with prejudice to all parties and without costs to any party; and

IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the undersigned attorneys for the parties herein that, pursuant to Rule 16 of the Federal Rules of Civil Procedure, so much of that claim for relief of the counterclaims herein designated as the second counterclaim by which defendant Societe Les Piles Wonder demands damages in the nature of lost profits be and the same hereby is dismissed with prejudice to defendant Societe Les Piles Wonder and without costs to any party, and said second counterclaim shall hereafter be deemed to seek damages in the amount of $25,400.00; and

IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the undersigned attorneys for the parties herein that, pursuant to Rule 16 of the Federal Rules of Civil Procedure, plaintiff Paul G. Garrity and defendant Wonder Corporation of America be and the same hereby are dismissed as parties to this action, except that the caption of this action shall remain as set forth above.

Dated: August 26, 1976

CASEY, LANE & MITTENDORF

By /s/ William E. Kelly
A Member of the Firm
Co-Counsel for Plaintiffs
26 Broadway
New York, New York 10004

PHILIP R. DUNN

/s/ Philip R. Dunn
Co-Counsel for Plaintiffs
62 La Salle Road
West Hartford, Connecticut 06106

PENNIE & EDMONDS

By /s/ James G. Foley
A Member of the Firm
Co-Counsel for Defendants
330 Madison Avenue
New York, New York 10017

TIERNEY, ZULLO, FLAHERTY & CIOFFI

By /s/
A Member of the Firm
Co-Counsel for Defendants
134 East Avenue
Post Office Box 2028
Norwalk, Connecticut 06862

SO ORDERED:

/s/ Jon O. Newman
Jon O. Newman
United States District Judge

TRANSCRIPT.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - - - x

PAUL C. GARRITY and :
GARRITY INDUSTRIES, INC., :
Plaintiffs :
vs. : CIVIL 15,922
SOCIETE LES PILES WONDER and :
WONDER CORPORATION OF AMERICA, :
Defendants :

- - - - - - - - - - - - - - - - - - - x

OCTOBER 14, 1976
AT WATERBURY

BEFORE:
THE HONORABLE THOMAS F. MURPHY,
Senior United States District Judge

JURY TRIAL

BEST COPY AVAILABLE

Appearances:

For the Plaintiffs:

CASEY, LANE and MITTENDORF
26 Broadway
New York, New York 10004
By: ALAN R. WENTZEL, ESQ.

PHILIP R. DUNN, ESQ.
62 LaSalle Road
West Hartford, Connecticut 06107

For the Defendants:

PENNIE & EDMONDS
330 Madison Avenue
New York, New York 10017
By: JAMES FOLEY, ESQ.
JOSEPH J.C. RANALLI, ESQ.

(10:00 a.m.)

THE COURT: Garrity against the French company, Societe Les Piles Wonder. Can we call it Wonder, as you suggested, Mr. Foley?

MR. FOLEY: Piles Wonder.

THE COURT: Are both sides ready?

MR. WENTZEL: Ready for the plaintiff, your Honor.

MR. FOLEY: Ready for the defense, your Honor.

THE COURT: Call your witness, please.

MR. WENTZEL: May I make an opening statement to the jury?

THE COURT: The rules provide otherwise. If you feel it necessary, how long will you be?

MR. WENTZEL: Eight minutes or so.

THE COURT: We will try it for eight minutes.

MR. WENTZEL: I also submit a Trial Memorandum and Requests to Charge. (Hands document.)

THE COURT: Did you give a copy to counsel?

MR. WENTZEL: Yes. I just did.

Gentlemen of the jury, let me introduce myself. My name is Alan Wentzel of Casey, Lane and Mittendorf. With me at the counsel table is Mr. Philip Dunn.

I would just like to tell you in brief what the case is about before we call our first witness, and in doing so I would certainly caution you that anything I say or any of the attorneys say during this case is not evidence in the case.

The parties in this case are Garrity Industries, Incorporated which is a company headquartered in Stamford and is owned by Paul Garrity who is sitting back there (indicating) and who will be our first witness.

This company is in the business of mass distribution of low cost disposable products such as disposal flashlights and disposable lighters, cigarette lighters. It makes some of its products and it buys some of its products from other manufacturers. It sells these products to wholesalers who then in turn resell them to drugstores and tobacco stores and so forth, to retail chains such as Woolworth's and to department stores and military bases and so forth.

The defendant in the case is a French company, Societe Les Piles Wonder, who we will call in this case Piles Wonder. It is a company that has its offices in France, and it has factories in France where it makes batteries and disposable flashlights, and it sells today through a subsidiary called Wonder Corporation of America.

Now, in this case, Garrity is suing to recover damages which it suffered when a large quantity of disposable flashlights sold to it by Piles Wonder turned out to be defective. Its damages consist of not only a return on the purchase price and its costs of shipping the merchandise over to this country, but also lost profits on sales it was unable to make and returns it got back from its customers as well as expenses of having to inspect the flashlights and store them and ship them back to the seller.

Let me just briefly outline the facts in this matter. From 1968 to 1972, Garrity Industries opened up the market for disposable flashlights for Piles Wonder. By 1972 it was selling them in this country for Piles Wonder at a rate of over one million disposable flashlights a year. The lights were made in France and had the Garrity trademark, Dispos-A-Lamp, stamped on them at the factory.

From April to July, 1972, Piles Wonder shipped approximately four hundred eighty thousand disposable flashlights to Garrity. Beginning at about July, after a large number of these had been shipped out to customers, Garrity began receiving complaints from its customers that there was a defect and the lights did not work.

He wrote to Piles Wonder and asked them whether they knew anything about the problem. Piles Wonder's representatives came to see Mr. Garrity and told him that, yes, they did know about the problem, that they had a similar problem in France, that they would replace his flashlights and give him a credit on the purchase price for all those that turned out to be defective.

Well, several months went by and the promises to ship new flashlights never came forth and Garrity was told there were production problems and, eventually, he was told that "No. We are not going to ship the replacements. First you have to pay for all the defective flashlights, and then we will give you a credit on part of the defective flashlights."

Well, at this point, Garrity Industries was unable to replace the returns it was getting back from its customers. It was unable to sell its normal quota or sales volume of approximatel, one hundred thousand a month, particularly in the Christmas season, and it virtually went out of the business of selling this particular disposable flashlight.

Finally, in January of 1973, Piles Wonder terminated exclusive agency that Garrity had in this country and began selling to its own subsidiary.

Now, in 1973, Piles Wonder accepted back all the defective flashlights and the inventory that Garrity had and agreed to give a credit of forty-one cents per flashlight on each of the lights that were shipped back.

This leads to the first element of damages which we will claim is forty-one cents for each of the flashlights that we have returned to Piles Wonder. Mr. Garrity's lost profits consist of the difference between that forty-one cents that he paid for the light and the price at which he sold it, which was about eighty-one cents less some salesman's commissions and shipping charges.

He had to refund his customers in all the cases in which returns were made, and he was unable to fill replacement orders.

We will also ask for incidental expenses which total up to about fifteen thousand dollars consisting of shipping charges when lights were returned back to Garrity Industries by its customers, storage charges, labor for inspecting them and shipping them back to Piles Wonder.

We expect to prove total damages in this case, and we will ask you for a verdict at the end of this case in favor of Garrity Industries in the amount of approximately one hundred sixty-six thousand dollars. We will give you the exact details and the exact amounts as the evidence comes forth. Thank you.

THE COURT: Mr. Foley.

MR. FOLEY: Gentlemen of the Jury, I just have a few remarks to make. My name is James Foley. I am from New York with the firm of Pennie & Edmonds. This is my partner, Joseph Ranalli (indicating). The rest of the people are from Piles Wonder or from Wonder.

Essentially, Mr. Wentzel has stated generally the facts. I would like you to keep in mind, however, the four hundred eighty thousand flashlights that you heard that were shipped between March and July of 1972 were never paid for.

No effort was ever made to pay for them. They totaled at that time some one hundred thirty-five thousand dollars, I believe.

Now, we admit, and you will see it is true that there was a defective batch of flashlights that were shipped among those four hundred eighty thousand.

You will find from the proof that Piles Wonder made every effort it possibly could to put those lights in repair and restore Mr. Garrity to a condition to sell flashlights. We offered to repair them as we had done all over Europe with the certain batch. We offered to sell them new ones, but we are not expected to sell them new ones when he didn't pay for the old ones, and he refused to pay.

I just want you to keep that in mind as we go along here because as of this day we have never been paid for four hundred eighty thousand flashlights sold in 1972 of which only a small portion were defective.

That is all I have to say, your Honor.

THE COURT: All right. Call your witness, please.

MR. WENTZEL: Plaintiff calls Paul C. Garrity.

Continues on Page 11

PAUL C. GARRITY,

called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Will you state your full name and address?

THE WITNESS: Paul C. Garrity. 247 Ocean Drive West, Stamford, Connecticut.

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Garrity, I am going to stand way back here so that my voice will project all the way up there, and I want you to project yours all the way back here so everybody in the room can hear you.

Mr. Garrity, what is your occupation?

A I am President of Garrity Industries.

Q And how long have you held that position?

A Since the founding of the company in 1968.

Q Are you an owner of the company?

A Yes. I am.

Q Would you briefly describe your educational background and your prior employment history?

A I had a football scholarship to Harvard College, graduated from Harvard College. I spent a couple years in the war, came back from the war and went to Harvard Business School on the G.I. Bill and graduated from Harvard

Business School. From there I held several positions starting in sales with Swank, Incorporated, which was a men's jewelry manufacturer. I left to go back into the Korean War for another two years and came back from that war, joined Schick, Incorporated in Connecticut and worked in the Sales Division of that company until they were sold to Revlon in the late '60s at which time I formed a company called Bentley Lighter Corporation, which I sold a few years later and founded Garrity Industries in 1968.

Q In what business is Garrity Industries engaged?

A Garrity Industries is a small company devoted to the manufacture and the marketing of disposable flashlights and disposable cigarette lighters.

Q Where does Garrity Industries obtain its products that it sells?

A We obtain our disposable lighters from a company named Genouds Ets Cie. The brand name is Fudor in Lyon, France. We also manufacture disposable lighters in Stamford. We manufacture all of our own disposable flashlights.

Q And to whom do you sell your products?

A We sell our products in many channels of distribution. They're mass marketed products. We sell them to the tobacco wholesalers, to the drug wholesaler, to the drug chain, to the food chains, the mass merchandisers, the discounters, the military. The PX, premium trade, the advertising specialty trade, variety chain trade.

Q In 1972, did you have a sales force that accomplished these sales?

A Yes.

Q And is there any difference in the distribution of the two products in cigarette lighters and the flashlights?

A No. They're basically the same.

Q Did there come a time when Garrity Industries sold flashlights manufactured by Piles Wonder?

A Yes.

Q When was that?

A 1968.

Q Would you describe the circumstances of how that relationship began?

A Yes. Garrity Industries as a small manufacturer were looking for other products to diversify into. We looked for the products of the future that were new and different, that brought new benefits to the consumer. I had seen disposable flashlights in Europe. They also were on the market in the United States. Mr. Genouds, who owned Genouds Ets Cie, felt that this would be a very good product for Garrity Industries to have in the United States, and he made an arrangement with the Piles Wonder Corporation for him to purchase the flashlights and resell them to Garrity Industries.

Q Had Piles Wonder sold this disposable flashlight in the United States prior to that time?

A Not to my knowledge.

Q Did you enter into a written agreement with Piles Wonder?

A No. We sent several agreements, but never entered into them.

MR. FOLEY: I didn't hear that.

THE COURT: I didn't hear it either.

THE WITNESS: We attempted to. We sent agreements to be signed, but we never formally had an agreement executed by them.

BY MR. WENTZEL:

Q Now, did there come a time when Garrity Industries dealt directly with Piles Wonder?

A Yes.

Q When was that?

A That was in 1971.

Q So after 1971 you were no longer buying through Genouds?

A That is correct.

Q Now, if you would address yourself to the period of time 1971 to 1972 when you were buying directly from Piles Wonder, would you tell us where the flashlights were delivered to Garrity Industries?

A Piles Wonder delivered the flashlights to a port in France where we purchased them and brought them into the United States. I think it was Le Havre, the port they were delivered to.

Q How did you place orders for the flashlights?

A Either in conversation, either in letter or by Telex. There was no formal placing of orders. The same way I worked with Genouds.

Q How did you get the flashlights to the United States?

A By boat.

THE COURT: When you say they were delivered to Le Havre, you mean they were delivered F.O.B.?

THE WITNESS: F.O.B. at Le Havre.

THE COURT: They were delivered to you at Le Havre?

THE WITNESS: Yes.

THE COURT: Thank you.

THE WITNESS: What was that last question?

BY MR. WENTZEL:

Q The question was: Who paid for getting the flashlights over to the United States?

A Garrity Industries.

Q And were there customs, duties imposed on those flashlights?

A Yes. There were.

Q Who paid for those?

A Garrity Industries. The duties were thirty-five percent, 1 believe.

THE COURT: Thirty-five percent of what value?

THE WITNESS: Of the F.O.B. value.

THE COURT: Thank you.

BY MR. WENTZEL:

Q Now, in the course of your dealings with Piles Wonder, up until July of 1972 did Garrity Industries promptly pay all the invoices submitted to them by Piles Wonder?

A Absolutely.

THE COURT: I don't follow that too well. We are not talking now about Genouds. We are talking now about the defendant in the year 1971, are we?

MR. WENTZEL: Yes, your Honor. You are quite correct. That question was so limited, let me broaden it now.

THE COURT: Well, I didn't want you to answer me. I am talking to the witness.

Did you say "yes" and implied by that that you paid the defendant for all of the lighters that were delivered to you in Le Havre for the year 1971?

THE WITNESS: Yes, I am, Judge.

THE COURT: Thank you.

BY MR. WENTZEL:

Q And prior to the time you dealt directly with Piles Wonder, did Garrity Industries pay all its invoices to Genouds promptly?

A Yes. They did.

Q Now, in the course of your dealings with Piles Wonder and Genouds, and this is again prior to the middle of 1972, were there any occasions when there were defects in the flashlights?

A Yes. There were occasional defects that we had which we replaced with customers, with wholesalers, with consumers, whoever sent them in. I do know that Genouds Ets Cie who formerly did business with Piles Wonder had a defective problem.

Q What was the rate of defects compared to the total number?

THE COURT: We are talking now about the year 1971?

MR. WENTZEL: Yes and prior.

THE COURT: Prior to that he was doing business not with the defendant, but with another company.

MR. WENTZEL: Yes, but the same product.

THE WITNESS: No. There was a period -- if I can correct this for the judge's benefit.

I was doing business on this product through another French company from 1968 to 1971. In 1971 I started doing business with them directly. Does that clarify it?

THE COURT: Your question is addressed to the period 1968 to the beginning or middle of '72?

MR. WENTZEL: Yes.

THE COURT: And I wouldn't think that is too relevant as to what happened prior to '71.

MR. WENTZEL: Well, all right, your Honor.

BY MR. WENTZEL:

Q Let me direct your attention to the period mid-1972, Mr. Garrity.

A Yes.

Q Did there come a time when you began receiving complaints about the disposable flashlights?

A Yes. I think it was in the summer of 1972 where we would have minimal complaints in the normal course of business as we progressed. At that time the complaints began to increase substantially and people started to return merchandise.

Q From whom did these complaints come?

A The complaints first came from our salesmen in the field who the wholesalers or our customers were telling them about the defects in the products. Secondly, it came from the wholesalers and the retailers. Thirdly, we started to get some back from the consumer, but we don't deal directly with the consumer.

Q What, if anything, did you do about these complaints?

A The complaints were -- what we normally do --

THE COURT: No. The question is: What did you do about these complaints?

THE WITNESS: These complaints, we replaced the merchandise.

BY MR. WENTZEL:

Q Where did you replace the merchandise from?

A From our inventory.

Q Did you have any communication with Piles Wonder on the subject?

A Yes. I did. I believe that I wrote to the President of Piles Wonder and called his attention to the fact that we were having this tremendous amount of defects, that it hadn't happened before, and there was something seriously wrong. I am not a technician, so I didn't know what was wrong, but I knew that the product was bad.

Q Let me show you this document and ask if you can identify it. (Hands document.)

A Yes. I can.

Q What is it?

A This is a letter from me to the President, to Pierre Courtecuisse, one of the owners of Society Les Piles Wonder.

Q It is dated August 25, 1972?

A August 25, 1972.

MR. WENTZEL: May I have it marked Plaintiff's Exhibit 1?

THE COURT: Is there any objection?

MR. FOLEY: No, your Honor.

THE COURT: 1 received.

(Letter dated August 25, 1972 received and marked Plaintiff's Exhibit 1.)

MR. WENTZEL: May I read it to the jury, your Honor?

THE COURT: Yes.

MR. WENTZEL: It is addressed to Monsieur Pierre Courtecuisse, Society Les Piles Wonder in France, dated August 25, 1972 and signed by Paul C. Garrity.

"Dear Pierre: We have had a rash of reports across the country about the quality of Dispoz-A-Lamp. It always seems to be the same story and it has to do with the switch. Either the switch will not turn on or when the switch is turned on, it will click back in the off position, but the lamp remains lighted. We have had reports from several cities in the country regarding this, and I don't have any actual products back, but we do have several thousand being returned to us by customers at which time I will personally inspect the product. This is the first time we have had such serious complaints on the flashlights, and I am wondering if you are encountering some of the same difficulties in France."

BY MR. WENTZEL:

Q Now, Mr. Garrity, did you receive any response from Piles Wonder to that letter?

A Not at -- no. I did not that I recall.

Q Did there come a time when you wrote another letter to Piles Wonder?

A The problem began to build and get more important.

THE COURT: The question was: Did there come a time when you wrote another letter? Was that the question?

MR. WENTZEL: Yes.

THE WITNESS: Yes. There was.

BY MR. WENTZEL:

Q Let me show you this document, a letter dated October 6th, 1972. Is that a letter that you wrote to Mr. Courtecuisse?

A Yes, it is.

THE COURT: No objection?

MR. FOLEY: No, your Honor.

THE CLERK: Plaintiff's Exhibit 2 as a full exhibit.

MR. WENTZEL: Received in evidence, your Honor?

THE COURT: Yes.

(Letter dated October 6th, 1972 received and marked Plaintiff's Exhibit 2.)

BY MR. WENTZEL:

Q Before I read this letter to the jury, Mr. Garrity, let me direct your attention to the first sentence of the second paragraph which states: "When your Mr. Sternlicht and Mr. Bertin were in my offices, they assured me..." Do you see that?

A Yes.

Q Do you recall a meeting in your office with Mr. Sternlicht and Mr. Bertin?

A Yes. I do.

Q Could you identify who they are?

A Mr. Sternlicht is the man in the gray suit, and Mr. Bertin is the man in the blue suit at the table.

Q Who are they by occupation?

A Oh, I'm sorry. Mr. Sternlicht is, I believe, President of Piles Wonder U.S.A. and Mr. Bertin, I believe, is Export Manager of Piles Wonder Corporation, France.

Q Were these gentlemen that you had dealt with previously?

A Yes.

Q For Piles Wonder?

A Yes.

Q Do you recall the meeting that was referred to in that letter?

A Yes. I do.

Q Could you tell us what occurred at that meeting? What was said?

A At that meeting, to the best of my knowledge, and it is in the letter, Mr. Bertin and Mr. Sternlicht told me that the problem that I was facing was worldwide in scope, that they had expressed it in Africa and France and many other countries that they sold disposable flashlights in, that they would remedy the situation, they would make me whole in cost of the product, the cost of the product, the duties, the freight, everything. And in addition to that, if I remember correctly, that they had two hundred thousand flashlights that they had ready that were a good product that they could ship to me in order to replace the defective products that were on the market.

MR. WENTZEL: Your Honor, may I read Exhibit 2 to the jury?

THE COURT: Yes.

MR. WENTZEL: Thank you. This is a letter dated October 6th, 1972. It is again addressed to Mr. Courtecuisse and signed by Mr. Garrity. It reads as follows:

"Dear Pierre: On August 25 I wrote to you regarding the problem that we were having with Dispoz-A-Lamp and the necessity for replacing customers inventories who have the defective lamps that I understand is a problem for you worldwide. When your Mr. Sternlicht and Mr. Bertin were in my offices, they assured me the fact you knew about the problem and that it was worldwide in scope, and that they had not advised me of this problem because they had hoped that the flashlights that they had made for the United States did not have the same defects as the other flashlights throughout the world. They also stated that I would be protected on the cost of the flashlights, the duty and freight which is only normal in international transactions. I have been advised that you have two hundred thousand bodies that you can make up for me in France of first quality merchandise, and I suggest you ship them immediately to Piles Wonder Connecticut so that I can swap my inventory for salable merchandise so I can fill backorders as well as take care of the returns that I am being deluged by from my customers. I have not heard a thing from you and it is now October 6th. Please advise immediately before Dispoz-A-Lamp is returned to us by all of our customers. Sincerely, Paul C. Garrity."

BY MR. WENTZEL:

Q Mr. Garrity, do you recall receiving a response to that letter?

A No. There was no response.

Q Let me show you this document and ask you if that is a document you received from Piles Wonder?

A This is not a response in a letter. This is a Telex. It came in on the machine.

Q Yes.

A Yes. We did receive this from Piles Wonder.

MR. WENTZEL: Mr. Foley, this is a Telex, dated October 10th.

MR. FOLEY: I have no objection to its being offered, your Honor.

MR. WENTZEL: It is being offered, your Honor.

THE COURT: Plaintiff's 3.

(Telex dated October 10, 1972 received and marked Plaintiff's Exhibit 3.)

MR. WENTZEL: May I read Plaintiff's Exhibit 3, your Honor?

THE COURT: Yes.

MR. WENTZEL: This is a Telex dated October 10, 1972 to the attention of Mr. Paul Garrity.

"1. We confirm that we are going to ship one hundred thousand lamps newly produced on October 31.

"2. We are ready to issue credit notes at your true cost price for the defective lamps.

"Please advise quantity. Best personal regards. B. Bertin, Piles Wonder."

BY MR. WENTZEL:

Q Now, Mr. Garrity, did Piles Wonder, in fact, ship the one hundred thousand lamps on October 31st?

A No. They did not.

Q Did you receive some communication from Piles Wonder about that subject?

A I think that Mr. Sternlicht came to my office or called me. I don't remember which, and advised me that they would be shipping the two hundred thousand lamps sometime in December, early December.

Q All right. Let me show you this document and ask you if that refreshes your recollection?

A Yes. It does.

MR. WENTZEL: Mr. Foley, this is a letter dated November 2 from Mr. Sternlicht to Mr. Garrity.

MR. FOLEY: No objection.

MR. WENTZEL: I offer it in evidence, your Honor.

THE CLERK: Plaintiff's Exhibit 4 as a full exhibit.

(Letter dated November 2, 1972 received and marked Plaintiff's Exhibit 4.)

MR. WENTZEL: May I read Plaintiff's Exhibit 4, your Honor?

THE COURT: Yes.

MR. WENTZEL: It is addressed to Paul Garrity, President of Garrity Industries.

"Dear Paul: The factory continues to have difficulties in producing Luebox. I have just been informed by Telex that the earliest your new Dispo can be shipped is December 15th. We will try to improve this schedule if at all possible, and I will keep you advised.

"Yours very truly, Wonder Corporation of America by Mark Sternlicht."

BY MR. WENTZEL:

Q Mr. Garrity, just so we can clear up some of the terms used in this letter, what does the word "Luebox" mean?

A That is the French name for my flashlight that I call Dispoz-A-Lamp. They're one and the same.

Q And "Dispo", D-I-S-P-O?

A We call it Dispoz-A-Lamp, and I would imagine it may be an abbreviation that the French use for Dispoz-A-Lamp. I don't know.

Q Now, Mr. Garrity, did you have some further correspondence with Piles Wonder on this subject? Let me show you this letter and ask you if that is a letter that you wrote to Mr. Sternlicht?

A Yes. I did write this letter.

MR. WENTZEL: Mr. Foley, this is a letter dated November 7, 1972 from Mr. Garrity to Mr. Sternlicht.

MR. FOLEY: No objection.

MR. WENTZEL: I offer it in evidence, your Honor.

THE CLERK: Plaintiff's Exhibit 5.

(Letter dated November 7, 1972 received and marked Plaintiff's Exhibit 5.)

MR. WENTZEL: May I read Plaintiff's Exhibit 5, your Honor?

THE COURT: Please.

MR. WENTZEL: It is addressed to Mr. Mark Sternlicht at Wonder Corporation of America, Darien, Connecticut.

"Dear Mark: I have heard on many occasions that you have approached several flashlight companies regarding the purchase of the flat battery for a disposable flashlight. As I told you, I fully intend to concentrate all my battery purchases with Piles Wonder. However, if it is Piles Wonder's choice to put people in competition with me, I certainly will have to take a look at other manufacturers of batteries. I am amazed that the factory is having difficulties producing the Luebox and is delaying my shipments until after the Christmas season. It seems incomprehensible to me that a manufacturer who controls their own battery source and has been making this type of flashlight for many years cannot solve the difficulties that they have experienced. This problem of quality which is readily admitted by the factory should have been called to our attention much before it was since we have been shipping inferior quality product this whole season and has certainly caused a bad name for this type flashlight.

"We are holding our inventories and certainly expect to be reimbursed for the cost of the freight and the duty for this merchandise. I know this was approved by you, the factory and Mr. Bertin, but I have heard nothing else about it since this approval. Sincerely, Paul C. Garrity."

MR. FOLEY: Your Honor, may I make one request here? We have no objection to this letter to the extent that it cites the history of this, but there is a reference in here in the first paragraph, the approaching of several flashlight companies. Now, if that is intended to indicate any motivation for the way we dealt here, your Honor, then I think the jury must be instructed that motivation is not an issue in this case. The whole question is whether these lights were defective or not and why they were defective or any other thing has nothing to do with the issue.

THE COURT: I am not too sure that is true. We can decide that later. Motivation might very well be involved. I don't know yet.

MR. FOLEY: All right, your Honor.

THE COURT: I will reserve on it. Yes.

MR. FOLEY: But it is a big subject.

BY MR. WENTZEL:

Q Mr. Garrity, let me show you this document and ask you if that is a letter you wrote to Piles Wonder?

A Yes, it is.

MR. WENTZEL: Mr. Foley, this is a letter dated November 17, 1972 to Mr. Courtecuisse.

MR. FOLEY: No objection.

MR. WENTZEL: I offer it in evidence.

THE CLERK: Plaintiff's Exhibit 6 as a full exhibit.

MR. WENTZEL: Is it received, your Honor?

THE COURT: Yes.

MR. WENTZEL: May I read it to the jury?

THE COURT: It is from Mr. Garrity to the President --

MR. WENTZEL: It is from Mr. Garrity to Mr. Pierre Courtecuisse at Piles Wonder.

THE COURT: Thank you.

MR. WENTZEL: And it is dated November 17, 1972.

"Dear Pierre: In reference to your recent Telex regarding one hundred thousand Dispoz-A-Lamps ready for shipment December 15th, please ship when ready. Please be sure that these are first-quality lamps since we are still having the problem that we discussed before. In addition to these one hundred thousand lamps, please schedule another one hundred thousand for shipment January 10th, and in addition to this, let us know what quantity you are able to produce by month in 1973 so that we can schedule our requirements accordingly. These flashlights are to be shipped in egg crates.

Sincerely, Paul C. Garrity."

BY MR. WENTZEL:

Q Now, Mr. Garrity, during this period in October and November, 1972 when this correspondence was being exchanged, was Garrity Industries continuing to receive returns of the flashlights from its customers?

A Yes. We were.

Q And did you make any effort to replace those flashlights?

A We replaced every flashlight that we possibly could. Some customers would not take a replacement and wanted a credit instead or cash instead.

Q Did you make any effort to determine whether the flashlights that you were sending out were defective?

A Yes. We did. Not being that technical about the problem of the flashlight, we decided on our own that there was a very specific problem. There was something wrong with the flashlight. So we opened up every carton and flipped the flashlight once to see whether the flashlight would light or not, which in our opinion at the time we felt was the test that it should be given. However, later we found out we did it wrong.

Q Had you received any communication from Piles Wonder as to how to go about testing?

A None whatsoever.

THE COURT: When you say that you opened them and tested, you mean you opened the ones that you then had in inventory?

THE WITNESS: Yes, Judge.

THE COURT: Is it fair to say that you opened them all?

THE WITNESS: Yes. Everything that was

shipped out the door was opened and tested.

THE COURT: And tested and proved satisfactory on the test?

THE WITNESS: On the one.

THE COURT: On the test you made?

THE WITNESS: To us, yes.

BY MR. WENTZEL:

Q Now, did you thereafter ship out those flashlights that you tested?

A Yes, we did, as replacements for the so-called defective.

Q Did any of those come back?

A Yes. They did.

Q And what was the reason they came back?

A They came back because they said the quality was not correct, that the product didn't work.

Q Now, did you ever receive any credit on the purchase price and your shipping costs such as referred to in the documents we have marked in evidence?

A No, not to my knowledge.

THE COURT: Well, did you tell them how many that you returned to customers or took back or gave credit and so forth?

THE WITNESS: I think we had, yes.

THE COURT: Of course, there would be no way for them to know, I guess, what credit to give you unless they knew. He says he thinks he did.

BY MR. WENTZEL:

Q Let me ask you this: At that time back in 1972, do you know how many returns you were going to have?

A We had no idea what was going to come back, but I think we have supplied them with the information of what has come back.

Q Let me show you a letter dated November 17, 1972 and ask you if you received that letter?

A Yes. I did receive that letter.

MR. WENTZEL: Mr. Foley, this is a letter from Mr. Courtecruisse to Mr. Garrity.

MR. FOLEY: No objection, your Honor.

MR. WENTZEL: We offer it in evidence, your Honor.

THE COURT: 7.

THE CLERK: Plaintiff's Exhibit 7.

(Letter dated November 17, 1972 received and marked Plaintiff's Exhibit 7.)

MR. WENTZEL: May I read Plaintiff's Exhibit 7, your Honor?

THE COURT: Yes.

MR. WENTZEL: This letter is written on Piles Wonder stationery. It is from Mr.

Courtecruisse to Mr. Garrity, dated November 17, 1972.

"Dear Paul: I have reviewed your letter of November 7th to Wonder Corporation of America with Messrs. Bertin and Sternlicht."

THE COURT: I am confused about the dates now. There were two letters, one November 7th and one the 17th. I'm sorry.

MR. WENTZEL: The November 7th letter is Exhibit 5, your Honor.

THE COURT: Thank you.

MR. WENTZEL: "At the same time I have been advised of Mr. Bertin's letter to you of November 10th concerning past due accounts. I think it is important that you recognize that we cannot consider the settlement of any eventual claims you may have against our company until all past due accounts have been settled. You certainly know that after the settlement of the past due accounts there will still remain two hundred seventy thousand one hundred twenty French francs from your current account corresponding to the last six invoices.

Yours very truly, Pierre Courtecuisse."

BY MR. WENTZEL:

Q At about this time, Mr. Garrity, did you receive any information from Piles Wonder concerning a proposed repair of the flashlights?

A At some time in this fall, I believe it was, Mr. Sternlicht visited me and said that the flashlights could be repaired and demonstrated to me how the flashlights could be repaired.

Q All right. Let me show you a letter dated December 12, 1972. That is a copy of a letter you received from Mr. Sternlicht.

A Yes, it is.

MR. WENTZEL: Do you have any objection, Mr. Foley?

MR. FOLEY: No.

MR. WENTZEL: I offer it in evidence, your Honor.

THE COURT: Received.

THE CLERK: Plaintiff's Exhibit 8 as a full exhibit.

(Letter dated December 12, 1972 received and marked Plaintiff's Exhibit 8.)

MR. WENTZEL: May I read Exhibit 8?

THE COURT: Is it dated December 12th?

MR. WENTZEL: December 12th, 1972. It is

addressed to Mr. Garrity from Mr. Sternlicht.

"Dear Paul: This will confirm our conversation of December 6th in the course of which I explained to you the cause of the defect in the Dispoz-A-Lamp and the way we are repairing same. I am pleased to advise that the tooling and jigs necessary to repair the units will be available to you on or about December 26th, 1972. At your earliest convenience, I would appreciate being advised the total quantity of units you still have in inventory which will have to be repaired and your estimated cost for the repairs. I have forwarded your battery request to France and will advise you upon receipt of their reply.

Sincerely, Wonder Corporation of America, Mark Sternlicht."

MR. WENTZEL: May I have one minute, your Honor?

THE COURT: Yes.

BY MR. WENTZEL:

Q Now, Mr. Garrity, would you describe what it was Mr. Sternlicht showed you as to how the flashlight could be repaired?

A The flashlight is a square box in shape and about the size of a cigarette pack, a box of cigarettes, a little bigger than that, and the problem seemed to be as they told me, that some of the plastic on the inside of the flashlight was breaking when you moved the switch. So their method of repairing the flashlight was to take a saw and cut a slit across the top of the flashlight and insert a piece of plastic into that slit to strengthen the switch mechanism.

Q Now, did you agree with Mr. Sternlicht to repair the inventory?

A Absolutely not.

Q Why not, sir?

A Because we have prided ourselves in everything we do of bringing out a very high quality product to the consumer, and I don't believe that it is correct to take a product that is a defective product and alter it in some way, and the alteration is very obvious to the consumer, and alter it in some way where you are giving the consumer a shoddy product that has been repaired for the exact same price that you would be charging for the full. We don't do business that way and I would have no part of it.

THE COURT: Did you tell them that at the time?

THE WITNESS: Yes. I did.

THE COURT: Thank you.

BY MR. WENTZEL:

Q Now, did you also receive from Mr. Sternlicht an offer to give you a credit on the defective merchandise?

THE COURT: You mean an oral offer or the letter that you already read?

MR. WENTZEL: Well, let me withdraw that question and ask you this.

Q Was the offer that was made in these initial meetings and correspondence with Piles Wonder to give you full credit for your cost, was that changed in any way?

A Yes. It was.

Q And in what way was it changed?

A I believe Mr. Sternlicht wrote me a letter saying now he would give me six percent credit on my inventories and defective merchandise.

Q And did you accept that offer?

A Absolutely not.

Q Why not, sir?

A Because I had paid for the product. I had lost profit. I had lost sales. I had incurred expenses with this defective product, and it wasn't fair. They had gone all the way from full retribution to less and less and down to the six percent. It's crazy.

Q Did you communicate your position to Piles Wonder?

A I believe I did.

Q Let me show you a letter dated January 19, 1973 and ask you if you sent that to Mr. Courtecruisse?

A Yes. I did.

MR. FOLEY: What is the date?

MR. WENTZEL: January 19th. (Hands document.)

MR. FOLEY: No objection, your Honor.

MR. WENTZEL: I offer it in evidence.

THE COURT: Plaintiff's 9.

THE CLERK: Plaintiff's Exhibit 9 as a full exhibit.

(Letter dated January 19, 1973 received and marked Plaintiff's Exhibit 9.)

MR. WENTZEL: May I read it to the jury, your Honor?

THE COURT: Yes.

MR. WENTZEL: It is dated January 19, 1973 addressed to Mr. Pierre Courtecuisse at Piles Wonder in France.

"Dear Pierre: As you know, we have had our problems on both the delivery and the quantity of Dispos-A-Lamp. It was unfortunate that you did not advise us of the quality problems you were having in manufacture and that we became aware of these when our customers began to complain about the quality of the product. Beyond that, when we did become aware of the quality problem, you were unable to ship us any additional merchandise which meant we had to keep shipping the poor quality merchandise through the fall of 1972. This problem has hurt our company's image, our trade market and cost us problems on the believeability of the quality of our other products. Your Mr. Sternlicht advises that you are willing to give a six percent credit on the shipments which is completely unacceptable. The problem existed on more than just the one lot that you advised us of and beyond that, as you know, in the disposable business, many consumers who are unsatisfied with the quality of the product never take the time to return it to the store, but just decide they will never buy that company's product again. When your Mr. Bertin and Mr. Sternlicht were in my office and discussed the problem that you had in Europe as well as the problem that existed here in the States, they stated there will be a full credit issued, including freight and duty for all the shipments of poor quality product, and this is exactly what I expect.

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"In addition, after doing business with you for many years, I was amazed to have my competitor, Lumi-jet, show me a sample of your new disposable flashlight which you are introducing this year. It is strange he is given one of your disposable flashlights and he is the one that announces it to me.

"We were also surprised to find that you were making a flashlight for Ash (sic) and it is selling at less than Dispos-A-Lamp's price. This was also called to our attention by some of our customers, and I believe you would not put up with this type of action by a supplier in France, and we are certainly no different in attitude than you in Europe.

"It appears now that we must continue with our developmental program which in each case we have gone to you and asked you to produce our new models for us, but in each case you have declined to produce these models for us. Fortunately, we have designed our products to take a multitude of batteries, both American and French. If you are interested in getting our battery business, it must be done by purchase order on a competitive basis. If we are to continue, I suggest that we have a meeting and set the ground rules for our operation so we both have a full understanding of where we are going and what we are doing.

"Sincerely, Paul C. Garrity."

Q Now, Mr. Garrity, what was the reference in that letter to a developmental program?

A Some years prior, I believe in 1971, in the marketing of disposable flashlights I felt that we needed a line of flashlights in two or three price ranges. We felt we had a need, number one, for a pen light type flashlight that fits into a person's pocket. We asked Piles Wonder to develop this product for us or develop a pen light for us wherein at one time they did bring a pen light over to us to look at, which was just a piece of metal, not even a model. When we saw they weren't serious about developing anything for us, we developed our own flashlight right in Stamford, which is design patented and construction patented.

Later we developed another very revolutionary type of disposable flashlight in Connecticut, and we sent the drawings and the prints to Piles Wonder requesting that they perhaps would be interested in manufacturing this for us.

They came back with a letter telling us the cost of the molds and the cost of the piece price and felt it was too high to put into production.

We then turned and put our product into production in Connecticut.

MR. FOLEY: Your Honor, I move to strike that response on the ground it has no relevancy to the issues in this case.

THE COURT: It might very well be, but you waited too long.

MR. FOLEY: No, your Honor. I wanted to see what he meant by "development".

THE COURT: Yes, but you waited too long.

BY MR. WENTZEL:

Q Now, Mr. Garrity, you recall in Plaintiff's Exhibit 7 which was Mr. Courtecuisse's letter to you, he stated that "We cannot consider the settlement of any eventual claims you may have against our company until all past due accounts have been settled"?

Let me show you this letter and ask you whether that was a response to Mr. Courtecuisse's letter?

A Yes. It was.

MR. WENTZEL: This is a letter dated November 27, 1972. (Hands document.)

MR. FOLEY: No objection.

MR. WENTZEL: I offer it in evidence, your

Honor.

THE COURT: 10.

THE CLERK: Plaintiff's Exhibit 10.

(Letter dated November 27, 1972 received and marked Plaintiff's Exhibit 10.)

MR. WENTZEL: May I read Exhibit 10, your Honor?

THE COURT: Yes.

MR. WENTZEL: It is from Mr. Courtecuisse to Mr. Garrity, dated November 27, 1972.

"Dear Pierre: Thank you for your letter of November 17th and calling my attention to Mr. Bertin's letter of November 10th. In reviewing Mr. Bertin's letter, I find that our Accounting Department is behind in some payments, but I also find his letter is in error. Invoice Nos. 2142, 2143, 2144, 2163, 2255 were paid by us last April by Check No. 1644 and Check No. 1632. The Accounting Department tells me that they have just asked the bank to buy the French francs to pay Invoices 2304, 2357, 2358, 2324 and 2325, which means that we have a total of seven invoices that are still open with you. We do not intend to hold up payment on any invoice in lieu of settlement of any claims that we might have regarding the defective merchandise which you readily agreed to reimburse us for our total cost. However, we have heard absolutely nothing from you since we called this to your attention and I understand you knew about this problem before we discovered it on the American market.

"I think it is only right that if you value our relationship that you would have settled any problems that have been caused by quality before this, which I know is normal on the part of most manufacturers. Even the replacement of the merchandise that was promised has not been sent to us and we have had to turn down orders because we have not been able to supply our customers a quality product.

"We are now approaching the first quarter of 1973, and again, we ask that we be notified what deliveries you will be able to supply us during the next year so we can announce our promotional plans accordingly.

"Please let me hear from you at your earliest convenience.

"Sincerely, Paul C. Garrity."

BY MR. WENTZEL:

Q Mr. Garrity, what was your understanding as to how many distributors Piles Wonder had in the United States when it was selling to you this particular flashlight?

MR. FOLEY: I object to that, your Honor.

THE COURT: I don't see how that is going to help the jury. You don't have any claim of violation of any agreement or anything, do you?

MR. WENTZEL: No, your Honor. I am simply laying a foundation for the next exhibit.

THE COURT: Well, I will sustain the objection.

BY MR. WENTZEL:

Q Mr. Garrity, let me show you this letter dated January 25, 1973 and ask you if you can identify it?

A Yes. I can.

Q And is that a letter you received from --

A Mr. Courtecuisse.

Q -- Mr. Courtecuisse.

MR. WENTZEL: I offer this letter in evidence, your Honor. (Hands document.)

MR. FOLEY: No objection, your Honor.

THE COURT: 11 received.

THE CLERK: Plaintiff's Exhibit 11.

(Letter dated January 25, 1973 received and marked Plaintiff's Exhibit 11.)

MR. WENTZEL: May I read it, your Honor?

THE COURT: Please.

MR. WENTZEL: It is dated January 25, 1973 and sent to Mr. Paul Garrity at Garrity Industries by certified mail.

"Dear Mr. Garrity: We wish to inform you that we have decided to enter the disposable flashlight market under our own name in the United States. We appreciate your past patronage and would be glad to consider any future order from you for our product on a non-exclusive basis and under the market conditions existing at the time such orders are placed.

"Yours very truly, Pierre Courtecuisse."

Q Now, from the time of the deliveries in mid-1972 to the present time, have you purchased any other flashlights from Piles Wonder?

A No, sir.

Q And have they delivered such flashlights to you in response to the requests in the exhibits we have marked this morning?

A No.

Q Have you paid the outstanding invoices?

A Absolutely not.

Q Why not?

A Because the product that they gave us was an inferior product. They had agreed to reimburse all costs of the product and never came forth with that and I have not paid the invoices.

Q Now, did there come a time when certain of the flashlights were returned by Garrity Industries to Piles Wonder?

A At some time Piles Wonder agreed to take back the return of the defective flashlights, yes.

Q And did you return the flashlights to Piles Wonder?

A Yes. We did.

Q Now, did you have any means of determining which ones were defective?

A No.

THE COURT: Of the ones he returned?

BY MR. WENTZEL:

Q Of the ones that you had in your inventory?

A We assumed all of them were defective because we had been inspecting them and shipping them out and getting them back, so we assumed they were all defective. We have no way of knowing inside of the product which is sealed whether it is defective or not defective.

Q Now, in the course of receiving returns from your own customers, was any credit given to those customers by Garrity Industries?

A Yes, sir.

THE COURT: He told us before that not only gave credit, he had to give cash sometime.

THE WITNESS: A check at times. The customer sometimes will take a credit for the merchandise. Other times, since we are selling them lighters, disposable lighters, he will just deduct his return from the lighter invoice. So the customer was reimbursed, whether it was a credit, a deduction from his invoice or a check that we sent him for everything that he returned.

BY MR. WENTZEL:

Q And who paid for the cost of shipping the returns back from the customer to Garrity Industries?

A Garrity Industries.

THE COURT: Who paid for what, counsel? Would you read it?

(The previous question and answer was read back by the reporter.)

THE COURT: What returns were shipped back?

THE WITNESS: Customer returns, Judge.

THE COURT: Not back to the defendant?

THE WITNESS: Oh, no. No. Back to Garrity Industries.

THE COURT: I'm sorry. I misunderstood it, counsel. You were asking the witness who paid for the return of the merchandise that was sent to Garrity by the unsatisfied customers; is that right?

MR. WENTZEL: Yes. Shipping charges, your Honor.

THE COURT: And they were all sent collect, were they?

THE WITNESS: Yes.

BY MR. WENTZEL:

Q Now, after the defective flashlights were returned to Garrity Industries by its customers and before they were shipped back to Wonder, what was done with them?

A Would you restate the question, please?

Q After Garrity Industries received back defective returns from its customers --

A Yes.

Q -- but before those units were shipped to Wonder, what was done with them?

A We put them in the warehouse, stored them in the warehouse.

Q And whose warehouse were they stored in?

A Garrity Industries.

THE COURT: I must say I am confused about how many were sent back to the defendant. Is there going to be any proof as to that?

MR. WENTZEL: Yes. I will establish the precise numbers with the next witness.

THE COURT: All right. I am ahead of myself. All right.

BY MR. WENTZEL:

Q Now, Mr. Garrity, did your company suffer any financial loss as a result of these defective flashlights?

MR. FOLEY: I object to that, your Honor, other than what he has put in his pretrial memorandum, itemization of his damages.

THE COURT: Yes. I think you are bound by that, counsel. Is that what you had in mind?

MR. WENTZEL: Yes, sir.

THE WITNESS: Yes. We did.

BY MR. WENTZEL:

Q Would you just describe without giving us the numbers the type of financial loss which your company suffered?

A The type of financial loss the company suffered was, number one, we had a faulty product that Piles Wonder insisted we pay for. Number two, we had paid freight --

THE COURT: Is that a loss to you? Your lawyer said: Will you describe the financial losses that you suffered not by number or anything, but just the type of loss.

THE WITNESS: All right. If we don't -- all right. We suffered a loss of paying the duties on the product, we suffered a loss of paying the freight on the product, we suffered a loss on the display material for the product, we suffered a loss on three years of building the marketplace for this product in our former advertising, we suffered a loss --

MR. FOLEY: Objection to that, your Honor. There is nothing in the record to indicate he has that kind of loss.

THE COURT: It is a question of proof. I suppose this is preliminary to proof, is it?

MR. WENTZEL: Yes, your Honor. Incidentally, on that particular item, your Honor, we are not making a claim of money damages.

THE COURT: Then we needn't worry about it, I guess.

THE WITNESS: No. We had a loss in the storage facilities where we had to store the merchandise. We had a loss in shipping the merchandise back to Piles Wonder. We had a loss in invoicing the merchandise out, paying sales commissions on it, getting the merchandise back, paying the freight back and having paid a sales commission for the sale which was not in effect. We had a loss from July to December which is our Christmas season of not being able to ship any product, to name a few.

MR. WENTZEL: I have no further questions.

MR. FOLEY: May I have a couple of moments, your Honor?

THE COURT: Yes.

(Court recessed at 11:05 a.m. and reconvened at 11:15 a.m.).

MR. FOLEY: Is it all right if I examine from here, your Honor?

THE COURT: Yes. Wherever you are comfortable.

MR. FOLEY: Yes. The exhibits are here.

CROSS-EXAMINATION

BY MR. FOLEY:

Q Mr. Garrity, what products do you make now?

A I make a disposable flashlight, I make a disposable lighter.

Q What is the name of your disposable flashlight?

A Depend-A-Lite and Life-Lite, Dispoz-A-Lamp, Mark IV Life-Lite.

Q Dispoz-A-Lamp, Mark IV Life-Lite. When did you first commence to make the Mark IV?

A I believe we commenced to make and I know accurately we commenced to make the Mark IV in the fall of 1972.

Q And by early 1973, was the Mark IV the largest selling disposable lighter in the United States?

A Dispoz-A-Lamp.

Q Yes.

A We believe it was.

Q Did you advertise to that effect?

A Yes. We did.

Q And wasn't it true that in 1973 you sold more Mark IV's than at any time in the years of selling Dispoz-A-Lamp -- you sold more Mark IV's than Dispoz-A-Lamps?

A In the year 1973 I sold more Mark IV's than Dispoz-A-Lamp because I had no Dispoz-A-Lamps.

Q I mean at any year of sales of Dispoz-A-Lamps. Did you sell more Mark IV's in '73 than in any year you had sold Dispoz-A-Lamps?

A I think not, but I don't know for sure.

Q You don't know for sure. Well, is there any year after 1973 that you can say that the total volume of sales of Mark IV's were higher than any one year in which you sold the Piles Wonder Dispoz-A-Lamps?

A I could find out by checking the records. I really don't know.

Q All right. Let me read from your deposition. Do you recall me examining you on deposition, Mr. Garrity?

A Yes. I do.

Q Let me read from Page 21.

THE COURT: What you should do, Mr. Foley, is state the deposition was taken on a certain date.

THE WITNESS: It was a couple years ago, wasn't it?

MR. FOLEY: I will, your Honor. July 1, 1974, and I will read from Page 21. I will start at Page 20, the bottom of Page 20 for clarity.

"Is the Mark IV disposable flashlight now the largest selling disposable flashlight in the United States?

"A We like to think so.

"Q I like to think I'm rich too. What do you believe?

"A There are so few people in the industry, in the disposable flashlight business in America that it is very hard to make a judgment. The two other competitors are Lumi-jet and Pilas Wonder, and I don't know their figures.

"MR. FOLEY: I have a copy from the United States, March 28, 1970. I will ask you to have this marked for identification."

Q Do you recall the ads that you put in the Journal?

A If you would show me which ad, Mr. Foley, I would recognize it, I'm sure.

MR. FOLEY: Your Honor, may I look for that after? There are so many ads in here. I will skip that for the moment. Wait a minute. Let me look for that after. I will find that in a minute, your Honor. There are many ads in here. I will skip that and go over to Page 22.

THE COURT: Were you asked this question and did you give this answer?

MR. FOLEY: I haven't asked him any of these, your Honor, yet. I am just reciting them.

"Was it true in March of 1974 that your company was the largest United States manufacturer of disposable flashlights?

"A We believe we were."

THE COURT: I think I was quite right. You can't read that as if it is just something out of the air. You have to say "Were you asked this question during your deposition and did you give this answer?"

MR. FOLEY: I am about to ask that, your Honor.

Q Do you recall my putting those questions to you and your giving those answers?

A Yes. I do.

Q Are those answers correct today?

A If I stated it, then they are correct.

Q All right, sir. Now, let me show you a copy of the letter, Mr. Garrity, and I ask you if you can identify this?

A Yes. I can. It was a letter from me to Pierre Courtecuisse.

Q Dated July 21, 1972; is that correct?

A 1972, July 21, yes.

MR. FOLEY: I would like to offer this, your Honor.

MR. WENTZEL: No objection, your Honor.

THE COURT: Received, Exhibit A.

THE CLERK: Defendant's Exhibit A as a full exhibit.

(Letter dated July 21, 1972 received and marked Defendant's Exhibit A.)

BY MR. FOLEY:

Q Now, Mr. Garrity, let me read you this portion of the letter.

THE COURT: You better tell the jury it is from somebody to somebody else. Is it?

MR. FOLEY: It is from Mr. Garrity --

THE WITNESS: Could you read the whole letter, Mr. Foley?

THE COURT: Listen, just let him do it. But tell the jury so they can understand the context. It is a letter dated July 21, 1972 from --

MR. FOLEY: Paul Garrity to Pierre Courtecuisse. We have done that.

THE COURT: Thank you.

MR. FOLEY: At the top of the second page, let me read you this, Mr. Garrity.

MR. WENTZEL: Your Honor, excuse me. Will I be given an opportunity right now to read the balance of this?

THE COURT: Right now before he does it?

MR. WENTZEL: Well, just so the jury can have the whole letter.

THE COURT: You can do it anytime you want, but not now.

MR. WENTZEL: Right after he finishes?

THE COURT: Right after, yes.

MR. FOLEY: "We currently have over five hundred thousand Dispoz-A-Lamps in inventory and do expect to place another order for the Christmas selling season, but until we can move some of this inventory out we are not in the position to place an immediate order."

BY MR. FOLEY:

Q Now, was it true at the time in July of 1972 that you had five hundred thousand Dispoz-A-Lamps in inventory?

A The records would prove it. I think it is, yes.

Q Now, there is in this case the reference to the sales of four hundred eighty-one thousand Dispoz-A-Lamps between March and July of 1972. Do you recall that?

A Yes. I believe so.

Q Now, would that be substantially the five hundred thousand that are referred to in this letter, Mr. Garrity?

A Would you restate the question so I understand it better?

Q Can we understand that the five hundred thousand that are referred to in this letter of July 21, 1972 represented what came in between March and July of 1972 from Piles Wonder?

A Whether it is between March and July, whether it is January and July, I don't know what months they came in on, but they came in in that previous six-month period.

Q All right. Did you ever receive any Dispoz-A-Lamps after July of 1972?

A I don't believe I did.

Q All right. Do you have any idea how many Dispoz-A-Lamps you have returned to Piles Wonder pursuant to the agreement?

A To what agreement?

Q The agreement to offer you credit and to accept the returns.

A I believe it is a matter of record. Let me think. Probably about one hundred eighty thousand lamps.

Q All right. Then can you now tell me why you haven't paid for the other three hundred twenty thousand lamps?

A Certainly.

Q Tell me.

A We haven't paid for the other three hundred eighty thousand lamps because we received defective product, product that was sent to us that was defective product to be put on the market.

Q How many were defective out of five hundred thousand?

A Nobody has any idea at all because when you sell a disposable product to the consumer, if the product is defective, many consumers just throw it away and say "I will never buy that company's product again." You don't get every return back from the consumer in disposable products, low priced disposable products when they are defective.

Q Now, Mr. Garrity, you received payment for the sale of more than three hundred thousand flashlights out of that inventory, did you not?

A I would assume we did.

Q Why didn't you pay Piles Wonder?

A Because Piles Wonder from the very beginning and without getting back into the dates, had assured me they would issue me credit for the defective merchandise.

Q I didn't ask you that.

A I would like to ask a question.

MR. FOLEY: I would like it stricken.

THE COURT: No. He asked a question. Did you get paid for the three hundred thousand that you sold?

THE WITNESS: Would you restate the question?

MR. FOLEY: Repeat that, please. He wants my question back, your Honor.

THE COURT: He wants your question.

(The previous question was read back by the reporter.)

THE WITNESS: I did not pay Piles Wonder because Piles Wonder would not issue me credit for the defective merchandise.

BY MR. FOLEY:

Q Did you not eventually receive credit for the defective merchandise from Piles Wonder?

A I don't know.

Q Well, Mr. Garrity, didn't your counsel and Mr. Flaherty arrange for the return of the flashlights to Piles Wonder?

A Yes. The defective flashlights, yes.

Q And what was the consideration for that, sir?

A I would assume we received a credit, but whether the credit was making it in whole or not, I don't know, but I'm sure the next witness can give you the facts on that.

Q And you demanded your true costs?

A Of course.

Q What was your true cost?

A The true cost was the cost of the product, the duty, the freight, the packing, the display material that had to be thrown away, et cetera.

Q What was the price of one Dispoz-A-Lamp at that time from Piles Wonder?

A The price of the Dispoz-A-Lamp landed in the United States?

Q Just the price of the product itself without the charges.

A I think about twenty-one cents.

Q And what was the price of the lamp, that cost?

A Forty-one cents.

Q The total price of everything was forty-one cents?

A No. Of the product, the raw product.

Q F.O.B. Le Havre?

A Yes.

Q Now, is not forty-one cents the credit that you were accorded under the arrangement between your counsel and counsel for Piles Wonder?

A I believe so.

Q And did you not ship your flashlights back pursuant to that arrangement?

A Yes. We did.

Q And was the arrangement referring solely to defective lights?

A Yes. It was.

Q Did not Piles Wonder tell you to ship back every '72 light in inventory?

A I beg your pardon. Would you read that?

(The previous question was read back by the reporter.)

THE WITNESS: Every '72 light?

Q Every light of 1972.

A Oh, 1972. Yes, they did, and some shipments were refused, and then they retook them.

Q And you shipped back every light of 1972 manufacture that was in your inventory?

A In my inventory at that time.

Q Were they all defective?

A Yes. In our opinion, they were.

Q What reason did you have to believe they were all defective?

A Because of the problem that we had had with the product going onto the market, coming back, sending it out again, coming back, the admission of the problem in Europe, in Africa, in all the places Piles Wonder sold their product, we felt that it was defective. Part of the defectives that went back were defectives that came back from our customers.

Q Hadn't you been advised that only a small portion of the lights shipped to you were defective?

A I may have. I don't remember, but in our experience it happened to be a very large part, regardless of what was said.

Q Had you been advised that Piles Wonder identified the defective batch or the batch of defective lights by month? Do you recall that?

A Absolutely not.

Q I see. Now, under the terms of payment with Piles Wonder, do you recall what they were?

A Yes. One hundred twenty days.

Q One hundred twenty days, end of month; is that correct?

A I really don't know. If you say so, it's okay.

Q All right. Now, would you know whether or not any of the invoices, the subject matter of the Piles Wonder claim here were payable pursuant to the terms before you ever learned of any defectives?

A If you say that I received those lamps, which I don't know, between March and July, that five hundred thousand, then the invoice would not be due until April, May, June, sometime the end of June, the first of July.

Q When would payment be due on an invoice dated March 30th?

A June 30th -- July 30th, I guess. July 30th.

Q Let me show you Plaintiff's Exhibit 1 which is your letter dated August 25, 1972. Do you recall that letter?

A I certainly do.

Q When did you first learn that there were any defects in the lights?

A I would say, and I am thinking back now, that we started, as any company might, to get complaints initially from our salesmen in the field who depend on income --

THE COURT: He wants to know when it was in point of time when you first learned of any defects. I would guess that would relate to a month or a year or day. Can you estimate that?

THE WITNESS: I would say the field organization, the salesmen started to report --

THE COURT: No. All he wants is time. When did you first learn --

THE WITNESS: I would say in about June, sometime in June, July, in that period.

THE COURT: Of '72?

THE WITNESS: Of '72, yes.

THE COURT: Thank you.

BY MR. FOLEY:

Q All right. Well, can you tell me why you waited until August 25 to advise Piles Wonder of this?

A I certainly can.

Q Tell me.

A When complaints come in from the salesmen in the field, you have to go out or find out if it is really true or it is just a salesman complaining that he has a poor quality product. The complaints began to come in much heavier and, in fact, came in so heavily that in August I felt I must write to the factory and tell them this is not just the normal defective or a small defective problem that we have. It is a major problem.

Q All right. Then did you make the determination based upon reports in July that you would not pay any invoices that were due July 30th?

A I don't believe so.

Q Well, why didn't you pay the invoices that were due July 30th of that year?

A I really don't know. Perhaps because of the defective problem, but I don't know.

Q Now, I think you testified that as defectives were returned, you replaced them out of inventory; is that correct?

A Yes, we did where we could.

Q What made you feel you could use your own inventory to replace defectives?

A Because we felt that our inventory was good quality merchandise. We had reported this problem to Piles Wonder in France on several occasions. We had no communication from them at all that they had a problem worldwide or had any kind of problem at all, so we assumed that this inventory was salable inventory. We even went to the extent of inspecting every one which Piles Wonder didn't tell us to do, and we shipped it after our inspection, after clicking the switch on once.

Q Hadn't you had a visit from Mr. Bertin and Mr. Sternlicht shortly after you wrote the letter to Courtecuisse on August 25th, Plaintiff's Exhibit 1?

A Yes. I believe I did.

Q Where did they visit?

A My offices in Stamford, Connecticut.

Q Did you discuss a defect problem at that time?

A Yes. We did.

Q And did they indicate to you that they were aware of the defects and the nature of them?

A Yes. They did.

Q Did Mr. Bertin tell you that it was a small number of defects in the production in a certain month?

A I don't know. No. I do not believe he did.

Q Is it reasonable that he told you that?

A No. I can tell you what he did tell me.

Q Well, since you felt safe to take out of your inventory returns, didn't you have the feeling that essentially or substantially all your inventory were good quality products?

A Restate that again, please. I'm sorry.

Q Didn't you give new lights out of your inventory for all those returned because you felt they were good products?

A We felt they were good products after our inspection, after our inspection.

Q And they were good products?

A We clicked them on once, it turned out they weren't good products.

Q When did you find they weren't?

A Because we sent them out and they came back.

Q How many weren't good products out of five hundred thousand?

A I don't know, Mr. Foley. All I know is this company will not put out a defective product to the consumer regardless of anything.

Q Did you return inventory in unopened cases?

A Yes. We did.

Q All right. Now, around October 6th, you wrote a letter which is Plaintiff's Exhibit 4, and you refer to two hundred thousand bodies. Do you see that in a portion of that letter?

A Yes. I do.

Q Can you tell me what bodies are?

A Bodies are the two plastic sides of -- what I believe bodies are, the two plastic sides of a disposable flashlight.

Q They do not have the workings in them; is that it?

A I don't know. To me, it would not have the workings in it.

THE COURT: Did you write the letter?

THE WITNESS: Yes. I did.

THE COURT: And are you telling this jury that you don't know what you meant?

THE WITNESS: I know what I meant, Judge.

THE COURT: What did you mean?

THE WITNESS: I meant two plastic sides.

THE COURT: Period?

THE WITNESS: Period because --

THE COURT: So that would exclude any workings?

THE WITNESS: Yes.

BY MR. FOLEY:

Q Now, a little later there came a time when you were offered true cost for all defective flashlights. Do you recall that?

A No, I don't, but if you could refresh my memory.

Q I will do it. Plaintiff's Exhibit 3. This is a Telex; is that correct, sir?

A Yes. If you are talking in this Telex true cost, I thought you were asking -- I received that plus the assurances of Mr. Bertin and Mr. Sternlicht.

Q Can you say what true cost was?

A True cost to me is the total involvement of buying a product and putting it on the market at what it costs you to effect it from your purchase to when it reaches the consumer.

Q Would that amount in this case to the forty-one cents we have talked about?

A No. No.

Q It would not. What else would it amount to?

A Again, it would involve sales commissions that were paid to salesmen that were lost, freight out, freight in, advertising materials, display, invoicing customers for the merchandise, recrediting them, all of the things that go into making up the product from when it was made and sold until the --

THE COURT: It reduces the profit considerably, doesn't it?

THE WITNESS: Yes.

THE COURT: What was your profit per flashlight?

THE WITNESS: I don't know. The Comptroller is here.

THE COURT: Yes. I know. But you are the boss. I am asking you. I don't want to pin you down to pennies, but don't you know what your business is doing, about how much you were making per flashlight?

THE WITNESS: (No response.)

THE COURT: Never mind.

THE WITNESS: I would say --

THE COURT: Never mind.

THE WITNESS: I am thinking.

THE COURT: I shouldn't interfere.

THE WITNESS: No. No. I can answer it. We paid approximately forty-one cents for the flashlight raw. We had displays, advertising is usually ten percent --

THE COURT: You told me this twice and the jury twice.

THE WITNESS: So I would say the profit, perhaps ten percent, eight to ten percent.

THE COURT: Ten percent of what?

THE WITNESS: Of the selling price, of eighty-one cents.

THE COURT: Your profit was about eight cents per lighter?

THE WITNESS: I would say a guestimate.

THE COURT: Thank you.

BY MR. FOLEY:

Q Now, Mr. Garrity, did you ever in any of your conversations or in any of the correspondence we have seen so far indicate to Piles Wonder that you regarded all the items you have just recited as part of your true cost?

A Did I ever advise Piles Wonder of that?

Q Yes.

A I don't think so. No. We said we wanted to be made whole in this defective transaction.

Q Didn't you just want a credit of forty-one cents? Isn't that what you asked for?

A It depends on how you interpret it. It could have been either way. I would have liked to be made whole for the whole expenditure we made.

THE COURT: The question was: Didn't you ask for a credit of forty-one cents?

THE WITNESS: Yes. I think we expected a credit.

THE COURT: The question was: Didn't you ask for a credit?

THE WITNESS: Yes. I think we did.

THE COURT: Yes.

BY MR. FOLEY:

Q I see. Now, in this Telex that we have referred to before, you indicated or they indicated they were to ship one hundred thousand lamps newly produced in October. Do you recall that?

A Yes. I do.

Q And subsequently, they indicated they would ship product to you; is that correct?

A Yes.

Q Now, did you have any reason to believe why they never shipped any such product to you?

A Perhaps they still had the defective problem. I don't know why they didn't ship it. We repeatedly asked for it. I don't know why they didn't ship it.

Q Wasn't the problem that you didn't pay your bills, Mr. Garrity?

A I don't think so. I paid my bills for four or five years of experience of this company.

Q Didn't Mr. Courtecuisse advise you that you had to pay up?

A Mr. Courtecuisse sent me a letter saying we should pay the bills. At the same time I said to Mr. Courtecuisse, "You should give me a credit for the defective merchandise."

Q Do you believe they would have given you new flashlights had you paid your bills?

A I have no idea.

Q Well, if you had paid your bills and were prepared to pay for new flashlights, would they not have given you flashlights?

A They may not give me flashlights. At the same time they were setting up their own operations. I don't know what they were doing.

Q What makes you believe they were setting up their own operation?

A Well, it's a matter of record in the depositions that were taken that they hired Mr. Sternlicht in 1970 when we were doing business with them, formed their company in 1971.

MR. FOLEY: Your Honor --

THE COURT: You asked him, counsel, and that is the price.

THE WITNESS: In 1971 and --

MR. FOLEY: There is nothing in this record, your Honor, but one letter in --

THE COURT: Counsel, that might be true, but you asked why, and when you ask that question, it opens the door very wide. One at a time, please.

BY MR. FOLEY:

Q When did you first hear that Piles Wonder was not to sell you in accordance with your arrangement any more Dispoz-A-Lamps?

A January of 1973.

Q And you do not believe or you do not know whether or not up until the latter part of December of 1972 whether Piles Wonder would have given you new flashlights to replace the defectives had you paid your invoices? You can't say that?

A Would you restate the question, please?

(The previous question was read back by the reporter.)

THE COURT: I don't think it is a question of hearing it. I think it is a question he didn't understand it.

THE WITNESS: Yes.

BY MR. FOLEY:

Q All right. And you cannot say either way whether Piles Wonder would have given you new flashlights or replaced defectives had you paid your invoices?

A I cannot say whether they would or they wouldn't.

Q All right, sir. Now, do you recall a time when Mr. Sternlicht came to see you with the proposition that Piles Wonder would repair all the defective lights in your inventory?

A Yes. I do.

Q And he described to you how the repair would be made?

A Yes. He did.

Q And did he show you any repaired product?

A Yes. He did.

Q And do you recall what the product looked like?

A Yes. I do.

Q Did it have a poor cosmetic appearance?

A Yes. It did.

Q Do I hold in my hand one of your products, Mr. Garrity?

A I can't tell until I see the brand name.

Q The type you used to sell?

A Not until I see the brand name.

Q (Hands light.)

A Garrity Industries, Stamford, yes. That is one of the products Piles Wonder made for me.

MR. FOLEY: May I mark this as an exhibit, your Honor? It will probably be referred to again. Do you have any objection?

MR. WENTZEL: No, sir.

THE CLERK: Defendant's Exhibit B.

(Flashlight received and marked Defendant's Exhibit B.)

THE COURT: What is that Exhibit B, Mr. Garrity? Is it one of your products?

THE WITNESS: It is one of the products that Piles Wonder made for me.

THE COURT: Oh, I see.

MR. FOLEY: May I just let the jury see this, your Honor?

THE COURT: Sure.

MR. FOLEY: (Hands light to the jury.) I might say, your Honor, I think Mr. Garrity and counsel will agree that we have had this around for many years and in the files, so the batteries are dead.

Q Would that happen, Mr. Garrity, after so many months?

A Yes.

THE COURT: Do you have another question while the jury is looking?

MR. FOLEY: Yes. I am looking here, your Honor.

BY MR. FOLEY:

Q And as I understand it, from all your testimony before, you refused to accept the repair of your inventory; is that correct?

A That is correct.

Q And could you tell us again what your reasons were?

A My reason, very basically, is that I will not put on the market a product that is a defective product that is repaired in some way where the consumer is still getting a questionable defective product, and I won't do it, absolutely.

Q Now, let me show you what I believe to be a product now made by your company, and I will ask you if that appears to be so?

A That is our product.

Q And what do you describe that as?

A Dispoz-A-Lamp.

Q And it has another name to it?

A Mark IV.

MR. WENTZEL: Excuse me, Mr. Foley. Could you speak up.

BY MR. FOLEY:

Q It has another name, I said.

A Mark IV.

Q Mark IV.

MR. WENTZEL: Thank you.

BY MR. FOLEY:

Q Is this a product that is currently made and sold by you?

A This is a product made in Stamford, made by us and sold throughout the United States.

Q Do you manufacture it?

A Yes. We do.

Q Will you look at the rear of the label here?

MR. FOLEY: First let me mark that, your Honor.

THE CLERK: Defendant's Exhibit C.

(Dispoz-A-Lamp received and marked Defendant's Exhibit C.)

BY MR. FOLEY:

Q Now, would you look at the bottom, at the rear of the label there and read out from there?

A "If Dispoz-A-Lamp fails to operate under intermittent use within a year from date of purchase, mail to Garrity Industries, Stamford, Connecticut 06907. Enclose $1.00 to cover postage and handling costs. Your Dispoz-A-Lamp will be repaired or replaced and returned to you promptly. This guarantee does not apply to Dispoz-A-Lamps abused or misused. Garrity Industries, Stamford, Connecticut 06907."

Q Now, Mr. Garrity, was such a guarantee on the display cards of the Dispoz-A-Lamp that you sold which you had purchased from Piles Wonder?

A Yes. I believe it was.

Q Now, did you ever receive any Dispoz-A-Lamps back with the payment of a dollar?

A I don't think -- very minimal if we received any.

THE COURT: Did you get any, the question is?

THE WITNESS: Perhaps one or two. I don't know.

THE COURT: You don't know whether you got one or two even?

THE WITNESS: No. I'm sure one or two must have come back.

THE COURT: Are they sold at retail at a dollar?

THE WITNESS: No. No. They're sold for two dollars.

THE COURT: Two dollars.

BY MR. FOLEY:

Q Now, I believe that in the fall of 1972, you began selling a product which is the same as Defendant's Exhibit C, which I hold up; is that correct?

A My product, yes.

Q Was it true that you replaced the Piles Wonder Dispoz-A-Lamp defective with your own product also?

A I would say there were instances of that because we couldn't get any lamps from Piles Wonder and the customers insisted on a replacement, and we might have sent out some of ours in replacement. I would not deny that we didn't.

Q You would not deny that you didn't?

A (Witness shakes head.)

MR. FOLEY: Can I just take one second?

THE COURT: Yes.

MR. FOLEY: I just have one more question, your Honor.

BY MR. FOLEY:

Q I think you testified in response to the judge's question what your profit was on the Dispoz-A-Lamp, Piles Wonder light. Do you recall that?

A Yes. I do.

Q How much did you tell the court?

A I think I said eight to ten percent, around there.

THE COURT: You think you said eight or ten percent, did you say?

THE WITNESS: I think I said eight to ten percent.

BY MR. FOLEY:

Q And what did you sell a light for?

A I believe the French lighter was sold for eighty-one cents.

Q Well, then why are you claiming a forty-cent profit on each light, Mr. Garrity?

A Well, it depends on whether you are talking about net or gross profit, Mr. Foley.

Q What were you talking about when you answered the judge's question?

A I was talking about net profit which when he said to me "Don't you know what you do in your business?", I thought of my whole total business and what profits we may make in it, and that's how I answered that question.

As far as an individual product is concerned, if you are talking about product cost and what it takes to get it to retail and all the costs in between, we have all of those calculations down. I think they have been submitted to you.

Q No. They have not, sir. Now, think of your whole business again and tell us how you get forty cents as a profit on each lighter, on each flashlight?

A Would you, please, state the question again?

(The previous question was read back by the reporter.)

THE WITNESS: We don't get forty cents profit on each flashlight. There are costs involved in the cost of the flashlight.

THE COURT: I think counsel wants to know, aren't you claiming that in this lawsuit as part of your damages?

THE WITNESS: I think that involves that figure.

THE COURT: All he wants to know, isn't that what you are claiming as part of your damages?

THE WITNESS: Yes.

THE COURT: Now, the question is: How do

you figure out the forty cents as being part of your damages?

THE WITNESS: The product costs forty-one cents. We sell it for eighty-one cents. When we give a credit to the customer that returns it to us, we must give him a credit of eighty-one cents which is what he paid for the product. That is what he paid for the product. That is what he deserves back. Does that answer it?

BY MR. FOLEY:

Q No. That doesn't answer it. That is your answer?

A Well --

Q Now, tell us when you answered the judge how you figured the eight to ten percent?

A I think I already said that when he asked me that I figured my overall business and how it operates to come up with some sort of a figure.

Q You mean a net profit of your overall business, say, after all expenses, overhead and everything?

A Yes.

Q Does that take into consideration your flashlight business or your lighter business?

A Pardon?

Q Does that take into consideration your lighter business too?

A Certainly.

Q Don't you sell lighters in volume?

A Yes. Yes.

Q Now, I have one more thing. Let me show you a letter dated January 5, 1973 from Mark Sternlicht of Wonder to Mr. Paul Garrity. It has already been marked as Exhibit 27 on the Garrity deposition, and I will ask if you recall that letter. (Hands document.)

A Yes.

MR. FOLEY: All right. Any objection, Mr. Wentzel?

MR. WENTZEL: No objection.

MR. FOLEY: I would like to mark this.

THE CLERK: Defendant's Exhibit D.

(Letter dated January 5, 1973 received and marked Defendant's Exhibit D.)

BY MR. FOLEY:

Q Now, Mr. Garrity, let's summarize. You were offered a credit for all defective lighters -- for all defective flashlights in your inventory; is that correct?

A We received a letter and a Telex saying, yes, that they would give us a credit.

Q Piles Wonder offered to repair what was in your inventory; is that correct?

A They wanted me to repair it, and then if I didn't, they would repair it, if I remember correctly.

Q You declined that?

A Yes. I did.

Q Then you said that Mr. Sternlicht proposed a six percent allowance rate on inventory for defects. Do you recall that?

A In that very letter that you just showed me.

Q Didn't Mr. Sternlicht indicate to you that he would allow a higher defect rate if you appeared to have one?

A In that letter right after the paragraph saying, "We allow you a six percent defect rate", I think there was another paragraph saying, "And if your defects run a little higher, we will adjust it or we will do something.", I believe.

Q Why didn't you tell that to the court in response to your counsel's question?

A What was my counsel's question?

Q You said you rejected the six percent defect rate; is that correct?

A Absolutely.

Q You were going to be allowed more than six percent, weren't you?

A Not necessarily.

Q What does this say, this paragraph?

A Does it give a specific --

Q Read the second paragraph.

A The second paragraph says "In addition, I am authorized that if you should be in a position to materially demonstrate the actual reject rate is higher, we would issue additional credit as required." Still the same six percent, same six percent, but reject rate higher, if you really want to read it.

MR. FOLEY: May I read this, your Honor, to the jury?

THE COURT: Yes, you may.

MR. FOLEY: "Mr. Paul Garrity, President, Garrity Industries, 20 Garland Drive, Springdale, January 5, 1973.

"Dear Paul: Further to our recent telephone conversation I have been in contact with the factory by telephone and am informed our reject rate in Luebox is six percent. We are, therefore, prepared to credit your account with the corresponding percentage applied to all Dispoz-A-Lamps delivered to you beginning with your Invoice 2328.

"In addition, I am authorized to advise you that should you be in a position to materially demonstrate the actual reject rate is higher, we would issue additional credit as required. I sincerely hope the above information will enable you to bring the outstanding amount up to date and resolve all outstanding matters.

"As I have told you, I will be away until January 11th, and then until the 19th. Should there be any need to get in touch with me, my office will have my whereabouts.

"Also, Bill Heath is familiar with the present situation and during my absence will be happy to assist you in whatever way he can."

BY MR. FOLEY:

Q Now, Mr. Garrity, you weren't limited to a six percent reject rate, were you?

A According to that letter, I was not limited to a six percent reject rate.

Q Well, do you have any other information which would change that?

A I have other information that the returns that came back from any customers regardless of what Piles Wonder said that their rate was in Europe of six percent, which I don't believe, I received them back, what do I do --

MR. FOLEY: That is not responsive. I move to strike it, your Honor.

THE COURT: Let it stand.

BY MR. FOLEY:

Q What other information do you have that you would not receive better than a six percent reject rate?

A That I would not receive better than a six percent rate? I know nothing. They had previously told me they would make me whole.

Q In fact, the truth is you turned all the '72's back, didn't you?

A The defective merchandise, of course.

Q You have given it all back?

A Of course.

Q That is not six percent, is it?

A What?

Q That is not a six percent rate?

A No, sir.

MR. FOLEY: That's all, your Honor.

THE COURT: If you are only going to be a short while, we will wait. Otherwise, we can adjourn for lunch and I will leave it up to you.

MR. WENTZEL: I think just five minutes or so, your Honor.

THE COURT: Very good.

REDIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Garrity, a moment ago when you were explaining the eight or ten percent profit that you have, you explained that is a net profit after all expenses; is that correct?

A (Witness nods head.)

Q And you listed some of those expenses?

A Yes.

Q And they include all the expenses of your company, do they not?

A Yes.

Q Including your salary?

A Yes.

Q And your secretary's salary?

A Yes.

Q And your rent?

A Yes.

Q Everything?

A Yes.

Q Now, in 1972 when you took in eighty-one cents a unit from your customers you had, you expected to be able to pay all those expenses out of that eighty-one cents, didn't you?

A Of course.

Q But you had to give the eighty-one cents back, didn't you?

A Yes. I did.

Q Now, you nevertheless go ahead and pay all those expenses?

A Yes. I did.

Q Including the rent, your salary?

A Salesmen's salary, heat, light, power.

Q Salesmen's commissions?

A Everything.

Q Everything was paid?

A Yes.

THE COURT: Is there going to be somebody here who is going to tell us how many were returned and what monies you paid out to compensate those people?

THE WITNESS: Yes.

MR. WENTZEL: Yes, your Honor.

THE COURT: Thank you.

BY MR. WENTZEL:

Q So you ended up paying all the expenses, but not getting revenues; isn't that correct?

A That's correct.

THE COURT: Not getting what?

MR. WENTZEL: Revenues.

THE COURT: Not getting the revenues?

MR. WENTZEL: Yes.

BY MR. WENTZEL:

Q Now, in the fall of 1972 and the summer of 1972 when you first began getting reports of this defective merchandise and they first started to come back to you, did you have any idea at that time how many of these were going to come back?

A No.

Q At the time that you asked for a credit of forty-one cents or whatever your landed cost would be, did you also expect to have the defective flashlights replaced by Piles Wonder?

A Yes.

Q And when did you expect them to replace those defective flashlights?

A As soon as they possibly could.

Q And not six months later?

A No. We requested them to replace them many times.

MR. WENTZEL: I have nothing further, your Honor.

THE COURT: That's all, gentlemen?

MR. FOLEY: Yes, your Honor.

THE COURT: All right, ladies and gentlemen. It is ten after 12:00. We will adjourn for lunch until ten after 1:00.

(Court recessed at 12:10 p.m. and reconvened at 1:10 p.m.).

THE COURT: Mr. Wentzel, your next witness please.

MR. WENTZEL: Yes. The plaintiff calls John Chymeryz.

JOHN CHYMERYZ,

called as a witness, having been first duly sworn, testified on his oath as follows!

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: My name is John Chymeryz, C-H-Y-M-E-R-Y-Z. I live at 350 Bunny View Drive, Stratford, Connecticut.

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Chrmeryz, what is your occupation?

A I am the Controller of Garrity Industries.

Q How long have you been so employed?

A Approximately six years.

Q Would you give us a brief description of your educational background and prior employment?

A I am a graduate accountant from the University of Bridgeport. I have worked in public accounting. I have also been an internal auditor for Columbia Records. I have worked also as a Corporate Controller for Rockwell International and presently employed for Garrity Industries.

THE COURT: Did you say you were a public accountant?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

BY MR. WENTZEL:

Q What are your duties and responsibilities as a Controller of Garrity Industries?

A To record all business transactions in an orderly manner, to present fairly a financial statement to Mr. Garrity of what is transpiring.

Q Who at Garrity Industries has overall responsibility for the books and financial records of the company?

A That is my responsibility, sir.

Q So are you familiar with those books and records?

A Yes, sir.

Q Directing your attention to the year 1973, did there come a time when Garrity Industries delivered certain disposable flashlights to Piles Wonder?

A Yes, sir.

Q Could you give us the dates of those shipments and the amounts? That is to say, the number of flashlights in each shipment.

A All right. We billed them on May --

THE COURT: No. The question was: Would you tell us when it was that these deliveries were made?

BY MR. WENTZEL:

Q The dates and the number of units?

A All right. On May 29, 19 --

MR. FOLEY: Your Honor, I would like to know what he is referring to there.

THE COURT: We can mark it for identification.

MR. FOLEY: Yes.

THE WITNESS: All right. I do have an invoice here, No. 8827, dated 5-29-73, which states "We turned over..."

THE COURT: No. We just wanted to know what it was you were looking at. You say it was an invoice, dated that day?

THE WITNESS: Yes.

THE COURT: You can just mark it for identification.

MR. WENTZEL: I will mark all of these, your Honor.

THE COURT: All in one batch?

MR. WENTZEL: We have an invoice for each shipment.

THE COURT: You are going to mark the invoices?

MR. WENTZEL: Yes.

THE COURT: All right. When we interrupted you, you said there was a delivery made on 5-29-73 of how many?

THE WITNESS: There was a billing made on 5-29-73.

THE COURT: No. We are talking about goods returned.

THE WITNESS: All right. They were delivered on March 1st, 1973. It was not billed until May 29, 1973, and the number of units was one hundred twenty-five thousand eight hundred twelve.

THE COURT: One hundred --

THE WITNESS: One hundred twenty-five thousand eight hundred twelve.

THE COURT: That was on March 1, 1973?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

THE WITNESS: 10-11-73, they delivered seven thousand -- I'm sorry -- twenty-six thousand eight hundred ninety-eight units on our Invoice No. 7594.

On our Invoice No. 7715 on 5-29-74, that is, May 29, 1974, we delivered six thousand one hundred fifty units.

On July 12, 1974, we delivered to Piles Wonder two thousand one hundred forty-six units.

On August 13, 1974, we delivered two thousand eight hundred seventy units.

On September 18, 1974, we delivered two thousand two hundred thirty-two units for the total units delivered of one hundred seventy-eight thousand nine hundred fifty-four.

BY MR. WENTZEL:

Q Now, you have been referring to some documents there in giving your testimony.

A Yes. These are copies of shipping notices and invoices for the deliveries of these particular units to Piles Wonder of which they have signed off for.

MR. WENTZEL: May I have these marked for identification?

THE CLERK: Plaintiff's Exhibit 12 for identification.

MR. WENTZEL: I offer it in evidence, your Honor.

MR. FOLEY: All right. We have no objection, your Honor, and we stipulate to the figures returned.

THE COURT: I didn't hear the last part.

MR. FOLEY: We stipulate to the total returned.

THE COURT: Oh. Thank you. 12 received. One hundred seventy-eight thousand nine hundred fifty-four.

MR. FOLEY: That's right, your Honor.

THE COURT: Stipulated.

(Invoices received and marked Plaintiff's Exhibit 12.)

BY MR. WENTZEL:

Q Were all of those shipments accepted by Wonder?

A Yes. They were.

Q Have any of those units that were returned to Wonder been tendered back to Garrity Industries at any time?

A To my knowledge, no, sir.

Q Now, in addition to the one hundred seventy-eight thousand nine hundred fifty-four units that had been delivered to Garrity Industries, has Garrity Industries received back from its customers any units since the last delivery to Piles Wonder?

A Yes, sir.

Q And how many units has it received from its customers?

THE COURT: I am not too sure I understand the question. After September 18, 1974 did the question relate to?

MR. WENTZEL: Yes. These are returned from Garrity's own customers.

THE COURT: After that date?

MR. WENTZEL: Yes.

THE WITNESS: We have received twelve thousand four hundred forty-one units based on an inventory that was taken September 7, 1976.

THE COURT: September 7, 1976?

THE WITNESS: Yes, sir.

THE COURT: An inventory by whom?

THE WITNESS: By our warehousemen.

THE COURT: All right.

BY MR. WENTZEL:

Q And where are those units presently located?

A They are located in Garrity Industries' warehouse.

Q What does Garrity Industries intend to do with them?

THE COURT: This man is the Controller. Would he know what the President and Board of Directors and everybody wants to do with them?

Would you know what they intend?

THE WITNESS: I can only say I would assume.

THE COURT: No. Do you know?

THE WITNESS: No. Specifically, no, sir.

THE COURT: He doesn't know that.

BY MR. WENTZEL:

Q Now, the flashlights that were returned to Wonder, can you tell me how many of those flashlights actually came back from Garrity's customers versus returns made out of Garrity's warehouse inventory?

A The total net returns from customers?

THE COURT: Excuse me. May I have the reporter read it because I got lost.

(The previous question was read back by the reporter.)

THE COURT: Would you have a record of that?

THE WITNESS: Yes, sir.

THE COURT: In what fashion do you keep that record?

THE WITNESS: We had an inventory of units when we made the returns to Piles Wonder.

THE COURT: You have a record of some kind prior to that because the question includes that time prior to the returns, doesn't it?

MR. WENTZEL: No, your Honor. What I am

getting at here, I think there was some testimony earlier that some of the returns actually came out of inventory, that is, they had never been delivered out to Garrity's customers and the rest of the returns had been delivered out to its customers were found to be defective and came back to Garrity and then were sent back to Wonder. I am trying to get those two numbers.

THE COURT: Yes, but that includes merchandise that was sold when you first started to get these things back in '71 then, I guess.

MR. WENTZEL: No, your Honor. What I am asking right now is only the number that were unsold out of Garrity's warehouse that were returned to Wonder.

THE COURT: I will be quiet. I don't understand it yet, but if the witness does, all right.

THE WITNESS: We had an inventory in our warehouse before we made returns to Piles Wonder of the above one hundred sixty-eight thousand nine hundred fifty-four of eighty-three thousand twenty-two units.

THE COURT: Now, in the inventory in the warehouse, it totaled only eighty-three thousand

and you returned one hundred seventy-eight thousand?

THE WITNESS: Right. That was the inventory we had that was unsold merchandise. The balance of it or the difference between the two would be the merchandise that was returned to us by customers as defective.

THE COURT: I'm sorry. I don't understand it. Maybe the jury does, maybe defense counsel does, but I will keep quiet.

MR. WENTZEL: Well, now I don't like to leave the court in such a state.

THE COURT: Well, it might be my stupidity. That's all.

BY MR. WENTZEL:

Q Let me ask you this: Out of the one hundred sixty-eight thousand returns to Wonder were some of those in unopened cartons?

A Yes, sir.

Q And is that the unsold inventory we are talking about?

A Yes, sir.

Q And that totaled eighty-three thousand?

A Yes, sir.

Q The balance had come back from Garrity's customers?

A Yes, sir.

Q And it had been placed in the warehouse?

A Yes, sir.

Q And then were returned along with the eighty-three thousand?

A Correct, sir.

Q Now, do you have a total of the one hundred seventy-eight thousand nine hundred fifty-four that have actually been returned to date to Piles Wonder plus the twelve thousand four hundred forty-one that are now in Garrity's warehouse?

A Yes. That would total one hundred ninety-one thousand three hundred ninety-five.

MR. WENTZEL: Excuse me one moment, your Honor.

Your Honor, I just asked Mr. Foley whether we could stipulate to the fact that the cost, the landed cost to Garrity Industries --

THE COURT: I have read that somewheres.

MR. WENTZEL: Pardon me?

THE COURT: I have read that somewheres, that there was a stipulation.

MR. WENTZEL: That's right. It was forty-one cents per unit to bring the flashlights on land to Connecticut from France, including the selling price. Is that correct, Mr. Foley?

MR. FOLEY: Yes.

BY MR. WENTZEL:

Q Now, Mr. Chymeryz, have you made a calculation of what the total landed cost of the one hundred ninety-one thousand three hundred ninety-five units to Garrity Industries was at forty-one cents a unit?

A I have it at .40683, but not at forty-one cents.

Q Give it to us at .40683.

A That is seventy-seven thousand eight hundred sixty-five dollars twenty-three cents.

MR. WENTZEL: Mr. Foley, subject to your correction, if I may, since it is simply the multiplication of forty-one cents times one hundred forty-nine thousand three hundred ninety-five, it comes out to seventy-eight thousand four hundred seventy-one dollars ninety-five cents.

MR. FOLEY: Well, we will stipulate that he gets those figures.

MR. WENTZEL: Yes. I am only asking you to stipulate to the multiplication which you can check.

MR. FOLEY: All right.

BY MR. WENTZEL:

Q Now, Mr. Chymeryz, when Garrity Industries' customers returned the defective Dispos-A-Lamps to Garrity Industries, who paid for the shipping charges?

A They all came back to us either collect or they came prepaid and the deduction would be made from their check.

Q Garrity Industries paid for it?

A We paid for it one way or the other.

THE COURT: I don't know how you know that. Are you reading from something?

THE WITNESS: No. When the check --

THE COURT: You as the Controller didn't handle that?

THE WITNESS: No, but in many cases the person would come to me and say, "We have a freight charge that has been deducted from our check. Is it a legitimate deduction from their particular amount that they owe us."

THE COURT: Yes, but is there any record of how much and when this all took place because this is one of the things that you are required to prove if you have a claim for these matters.

MR. WENTZEL: Well, we are about to prove the amount of those shipping charges, your Honor.

THE COURT: I know, but he is not telling us where the records are of these things. He is telling us when someone came to him and said "Look at this." He said "Fine. That's all right." But where on the books can we find this? Do you have anything?

THE WITNESS: Without a detailed analysis of all the accounts --

THE COURT: That is how you add up money, a detailed analysis.

THE WITNESS: Yes, sir.

THE COURT: Don't you do that with all money?

THE WITNESS: Yes.

THE COURT: Without a detailed analysis he says what, you can't do it?

THE WITNESS: I cannot give you an exact figure.

THE COURT: We aren't dealing in exact figures here. What approximation can you make and what is the basis for your approximation?

MR. WENTZEL: We can do that, your Honor. We can do an average cost.

MR. FOLEY: Your Honor, may I say that we requested any kind of figures of this sort or any documentation of this kind on discovery and we never received any. They're calculating this for the trial, your Honor. We have gotten nothing to that effect, and I would object to any kind of evidence that indicates this type of cost.

THE COURT: Well, the objection is addressed to what we have heard so far. Sustained. Counsel says they can prove it differently.

MR. WENTZEL: In response to that, your Honor, Mr. Chymerys is the Controller of the company and he has known this since the beginning of the lawsuit and the man calculated damages.

THE COURT: Calculation is one thing, proving it is another to the satisfaction of a jury. That is why we have a great deal of problems with regard to all these small little details.

MR. WENTZEL: No question about that, your Honor.

THE COURT: All right. Let's try it again.

MR. WENTZEL: My point in this regard would be that a plaintiff in this type of situation under the Uniform Commercial Code is not required to prove down to the exact penny.

THE COURT: That is true in a great many cases, including antitrust cases. There has to be some measure of proof.

MR. WENTZEL: Yes, sir.

Q Now, Mr. Chymeryz, have you made a calculation of the shipping charges on the returns from Garrity Industries' customers?

THE COURT: May I ask first that he tell us, did he calculate on the number of returns? Wouldn't you have to have that if you add to it?

MR. WENTZEL: The first question is: How did he go about making the calculation?

THE COURT: All right.

BY MR. WENTZEL:

Q Have you made such a calculation?

A A calculation has been made. I went to the Traffic Manager in our particular company.

THE COURT: When did you go?

THE WITNESS: On September 20, 1976.

THE COURT: And was that man in business there all the time?

THE WITNESS: He was there, yes, sir.

THE COURT: The last couple of years?

THE WITNESS: Yes, sir. He then went and took freight bills to arrive at an average cost of shipping one lamp to various parts of the United States. He arrived at a cost of .025 cents per unit shipping cost.

BY MR. WENTZEL:

Q Do you have those calculations with you?

A The calculations are here, sir, along with the freight bills and --

MR. FOLEY: I object, your Honor. That is hearsay. We don't have the Traffic Manager here.

THE COURT: Well, he says he has the freight bills, but let's hear him out. The freight bills that the Traffic Manager handed you, and then you did the compilation?

THE WITNESS: He did the computation, sir.

THE COURT: Oh, he did the computation?

THE WITNESS: Yes, sir. Here's all his notes, how he arrived at the freight bills, et cetera.

BY MR. WENTZEL:

Q Did the Traffic Manager make this computation pursuant to your instructions and supervision?

A Yes, sir.

Q Now --

THE COURT: Wait. Let's not go too fast here. Do you have the freight bills there?

THE WITNESS: Right here, sir.

THE COURT: And what are they, freight bills to what parts of the United States?

THE WITNESS: Well, they went to Georgia.

THE COURT: By rail, by post, by airplane or what?

THE WITNESS: They would all go in by truck.

THE COURT: And these are freight bills for large quantities of these lights?

THE WITNESS: Lighters and flashlights, yes, sir.

THE COURT: Lighters and flashlights?

THE WITNESS: Well, they took -- well, when we sent them out, they may have gone out as a mixed shipment. Okay? So they had to pull off that portion that would apply to a lamp.

THE COURT: How many freight bills do you have?

THE WITNESS: Sir, offhand, an estimated guess, I would say there are fifty.

THE COURT: And what years are they dated?

THE WITNESS: I'm sorry. He said here "I took sixty-six shipments".

THE COURT: And the year he took the bills are dated what?

THE WITNESS: Just right on top he said "I took sixty-six shipments from our largest carrier for the months of January and February, 1972."

THE COURT: Yes. And he took out the lighters?

THE WITNESS: Yes, sir, and he arrived at an average cost of shipping at 1.0.

THE COURT: Did the carrier charge you separately for lighters and for flashlights?

THE WITNESS: Yes, sir.

THE COURT: Is there a different rate in his tariff?

THE WITNESS: Yes, sir. Right on the freight.

THE COURT: What is the rate for lighters?

THE WITNESS: The lighter's rate, well, it's a Class 100 and the weight was forty-eight pounds. The flashlights were a weight of ninety-four and a Class 70. It says an M rate. I don't have a way of determining what this M rate is relative to the amount of -- he would have the books there.

THE COURT: You better explain to the jury how you were able to compute the average cost of two cents and a half if you don't have the rate.

THE WITNESS: He went through a series of freight bills, putting down the number of lighters, flashlights, the charge, whether it is a minimum charge or a maximum charge. He would then multiply this out by the number of units shipped to arrive at a per unit cost. In other words, if there were one thousand lighters shipped and the cost is ten dollars, that would come out to --

THE COURT: But the bill doesn't say what the cost is for the lighters and/or the other. It just gives you the total bill and the rate by number, doesn't it?

THE WITNESS: No. The bill is broken down -- well, yes. It is total dollars, yes.

THE COURT: How do you know how much is applicable to the lighters and how much to the flashlights or how did he know?

THE WITNESS: The weight of the lighters and the flashlights is differentiated on the freight bill. In other words, the flashlight weighs a lot more than a freight bill. At this particular point, the Class 70, whatever it may be, that they used to compute this rate on, would be different than the Class 100 for the lighters.

The lighter being a more volatile product, the higher the freight rate.

THE COURT: Well, give me an example from one of the bills: What is the rate for a bunch of flashlights?

THE WITNESS: There were twelve pieces. I assume these are cartons of lighters that went out with a weight of three hundred seventy-two pounds. The class was 100 and the rate here is 493. There were forty-four pieces of flashlights that went out with a weight of one thousand two hundred seventy-six pounds with a Class 70 at a rate of 3.61 for a total prepaid rate or freight bill of sixty-four dollars forty cents.

THE COURT: And the rate from what you are now reading gives the rate of .493?

THE WITNESS: The rate was on the lighters, yes, sir. 4.93, I guess. There's no decimal point here, sir.

THE COURT: Just the figures 493?

THE WITNESS: Just 493.

THE COURT: And you can't tell whether they're dollars or --

THE WITNESS: The total prepaid would be sixty-four dollars forty cents.

THE COURT: On that rate or on the total?

THE WITNESS: On the total bill.

THE COURT: Well, continue, counsel.

BY MR. WENTZEL:

Q Now, what was the total number of units returned by Garrity's customers?

THE COURT: He is going to gather this information from what?

THE WITNESS: From the above information that I had submitted by the number of units that went to Piles Wonder less what I had in inventory, plus what I had received and is still in my warehouse as of 9-7-76.

THE COURT: You say that the total number returned to your company from your customers is computed by doing what?

THE WITNESS: In other words, I have returned to Piles Wonder, sir, one hundred seventy-eight thousand nine hundred fifty-four --

THE COURT: Now, do you know whether or no those were returned by your customers or what percentage were?

THE WITNESS: Eighty-three thousand o-two-two were in our inventory and not -- they were not sold. Okay?

THE COURT: No. It is not okay because my question was: You know what number were returned by your customers?

THE WITNESS: All right. If I may subtract two figures, sir.

THE COURT: Do anything you want.

THE WITNESS: One hundred eighty thousand three hundred seventy-three.

THE COURT: What is that?

THE WITNESS: Those are the net returns from customers that were returned to Garrity Industries.

THE COURT: And you did that by subtracting two figures, the eighty-three thousand from what?

THE WITNESS: From one hundred seventy-eight thousand nine hundred five four.

THE COURT: Yes, but how does that prove that the customers returned those?

THE WITNESS: These are based on our receivers of merchandise coming back from customers.

THE COURT: That is what everybody wants to look at. Where are they?

THE WITNESS: The receivers for every individual? Those I don't have, sir.

THE COURT: Does anybody have them?

THE WITNESS: They would be back at the company, yes, sir.

MR. WENTZEL: Your Honor, I have them. I was hoping we could avoid it because they're tremendously voluminous. Perhaps I could do it by example.

THE COURT: Try it.

MR. FOLEY: Your Honor, we stipulated that the returns came back and we even stipulated that Mr. Chymeryz had eighty-three thousand in the warehouse and that the rest came back from someplace. But otherwise, we will not stipulate to anything with respect to cost, and we object to all testimony in that respect.

THE COURT: Let me find out what the stipulation is, Mr. Foley. You stipulate that one hundred some odd thousand were returned?

MR. FOLEY: And we stipulate that one hundred -- whatever the sum was, were returned.

THE COURT: Yes. One hundred seventy-eight thousand nine hundred fifty-four.

MR. FOLEY: We stipulate that Mr. Chymeryz had eighty-three thousand in inventory and that the rest came back from someplace.

THE COURT: What rest came back, Mr. Foley?

MR. FOLEY: The rest. The difference between eighty-three thousand and his figure.

THE COURT: Well, there are only three sets of figures. The one hundred seventy-eight thousand nine hundred fifty-four were returned to you.

MR. FOLEY: Right, your Honor.

THE COURT: The eighty-three thousand were in the warehouse.

MR. FOLEY: Were in Garrity's warehouse.

THE COURT: And not returned?

MR. FOLEY: They came back too among the one hundred seventy-eight thousand.

THE COURT: They were part of the one hundred seventy-eight thousand.

MR. FOLEY: Right.

THE COURT: What is the other figure you agree to?

MR. FOLEY: Well, I agree that the difference between eighty-three thousand and one hundred seventy-eight thousand came back from Garrity customers to Garrity and thence were returned to us.

MR. WENTZEL: Plus, your Honor, we have

another twelve thousand four hundred forty-one on hand right now that have also come back from customers, I think was the testimony. What we end up with is a total of what the witness just gave, a total of one hundred eight thousand three hundred seventy-three flashlights were returned to Garrity Industries by its customers.

I have here, your Honor, what I was about to go into before that Mr. Foley was kind enough to stipulate was a receiving report for each and every return that came in over the three or four year period, every single shipment.

MR. FOLEY: We don't need them, your Honor, because they only count the sum -- my only point is we will not stipulate or agree that Mr. Chymeryz's testimony with respect to the cost of having these come back is proper. We never had any documentation in this case in all the time that indicated the cost of these coming back from Garrity customers. He himself has testified it was made up in September, 1976. That was last month.

THE COURT: A month ago, yes, but still bear with me a minute. You agree that the one hundred seventy-eight thousand nine hundred fifty-four were returned to you. You further agreed that included in that sum is eighty-three thousand o-two-two?

MR. FOLEY: It was in their warehouse, yes, sir.

THE COURT: And what happens to the figure of twelve thousand four hundred forty-one which this gentleman said was returned by customers?

MR. FOLEY: We have never seen them, your Honor, and we won't stipulate to those at all. They have them.

MR. WENTZEL: Your Honor, the testimony there was that those are returns that have come in since the last delivery to Wonder, they're still coming in, but as of --

THE COURT: Yes. That is what this man says. He sits up in a big office and he is not the best witness. Unless there is some corporate record about it I would sustain the objection to it. Do you have another question?

MR. WENTZEL: Do I understand, your Honor, that you are sustaining the objection to the proof of the existence of the twelve thousand four hundred forty-one?

THE COURT: The proof that I have heard by this gentleman about the twelve thousand four hundred forty-one units that were returned since September 18, 1974, yes. Maybe your warehouseman can come and tell us how he made the inventory and did that. I don't know.

BY MR. WENTZEL:

Q Now, did Garrity Industries provide warehouse storage space for the returns from its customers before they were sent back to Wonder?

A Yes, sir.

Q And have you made a calculation of the cost to Garrity Industries of providing that warehouse storage space?

A Yes, sir.

Q First of all, tell me where the flashlights were stored.

A At Garrity Industries at 20 Garland Drive, Stamford, Connecticut.

Q How did you go about making the calculation?

A Well, we took the size of a carton and it was done by the engineer.

THE COURT: Are we talking about we or you?

THE WITNESS: Well, I had the Engineering Department tell me that there were two square feet per carton of which these lighters --

THE COURT: I thought it was measured in cubic feet. Wouldn't you measure a carton in cubic feet?

THE WITNESS: Two by two by two?

THE COURT: I am only guessing.

MR. WENTZEL: Your Honor, we are only going to charge them for the bottom of the carton.

THE COURT: All right. Square feet on the bottom is four you say?

THE WITNESS: Two square feet per carton. Then I went to the leases and checked the lease to find out what we were paying per square foot.

THE COURT: In your own warehouse or someplace else?

THE WITNESS: In our own warehouse.

THE COURT: You were paying whom?

THE WITNESS: We were paying William E. Kelly, Trustee.

THE COURT: Did you lease the warehouse?

THE WITNESS: Yes, sir. The complete plant at 20 Garland Drive.

THE COURT: Is that a railroad property?

THE WITNESS: No, sir. The whole plant itself and the office space is all leased.

THE COURT: Yes.

THE WITNESS: We determined at that point --

THE COURT: We or I?

THE WITNESS: I determined from the lease that the rental was four dollars fifty cents per square foot for a lease from February '73 to February of '76, and there was a lease from February, 1970 to February 1973 of which the lease called for two dollars point o-five-eight-seven cents a square foot. I used an average of eleven hundred twenty-six cartons, this being in relation to the inventory that we had on hand of eighty-three thousand o-two-two units.

BY MR. WENTZEL:

Q You mean that is the number of cartons that those units would occupy?

A What was that again, please? I'm sorry.

Q Is that the number of cartons those units occupy?

A Yes, sir. I would multiply for seven months the number of cartons by two square feet times the square foot rate of rental in relation to percentage of the year that they were there, which was seven months to give me a rental of two thousand seven hundred two dollars ninety cents.

There was also a calculation made for four months.

Q All right. Now, wait a minute. I want you to stop right there because you testified before that that first delivery included the eighty-three thousand was made in March of 1973; is that correct?

A Correct, sir.

Q All right. And you have just given us seven months ending at what point in time?

A 1-31-73.

Q All right. We will forget the other month. What is that figure again? Two thousand seven hundred two dollars ninety cents?

A Yes, sir.

Q Thank you. Now, did Garrity Industries incur any costs for the inspection of the Dispoz-A-Lamps in 1972?

A Yes.

Q Do you have any documentation on those amounts?

A We billed Piles Wonder in three instances for labor for inspection on our Invoice No. 7872 for six hundred twenty-five dollars twenty-six cents; 8303 for one hundred seventy dollars thirteen cents; and 815702, 7,73 for one hundred sixty-seven dollars seventy-four cents totalling nine hundred sixty-three dollars thirteen cents.

THE COURT: That is what you billed them?

THE WITNESS: Yes.

THE COURT: The question was: Do you have any information for us as to the inspection cost?

THE WITNESS: The costs were arrived based on the hourly rates of the people that were doing the inspection.

THE COURT: For instance?

THE WITNESS: For instance, there was a fellow by the name of Cosmo Rinaro who worked forty hours. He made one hundred fifty dollars a week. To that I would add also the F.I.C.A. taxes, the State Unemployment taxes and the Federal Unemployment taxes which would then give me the total figure on our last Invoice No. 8157 of one hundred sixty-seven dollars seventy-four cents.

THE COURT: It took him forty hours that week to do it?

THE WITNESS: He worked forty hours, sir.

THE COURT: Did he do any other work at all?

THE WITNESS: No. That's all he was doing at this particular point.

THE COURT: They don't work under you, I guess, do they?

THE WITNESS: No, sir.

THE COURT: All right. Next.

BY MR. WENTZEL:

Q Do you have the invoices and the breakdown you just referred to there?

A I have one breakdown and two invoices, sir. There's the shipping charges (indicating).

Q Were all the amounts in these invoices calculated in the same manner?

A Same manner, sir.

MR. WENTZEL: Would you mark this, please?

THE CLERK: Plaintiff's Exhibit 13 for identification.

(Invoices marked Plaintiff's Exhibit 13 for identification.)

MR. WENTZEL: I will offer it in evidence, your Honor.

MR. FOLEY: I have no objection to the document, your Honor. We admit receiving those inspection bills.

THE CLERK: 13, full exhibit.

(Invoices received and marked Plaintiff's Exhibit 13.)

BY MR. WENTZEL:

Q Do you also have there the calculations you referred to earlier on the shipping charges?

A Is this on the two and a half cents?

Q Yes.

A Yes, sir. (Hands document.)

Q Would you just identify what these documents are?

A The cover sheet is a memo from my John J. Coppola in the warehouse to myself of where he did and how he calculated the .025 cents shipping cost per lamp. Underneath are his worksheets and copies of freight bills.

MR. WENTZEL: Would you mark that?

THE CLERK: Plaintiff's Exhibit 14 for identification.

(Calculations marked Plaintiff's Exhibit 14 for identification.)

MR. WENTZEL: I offer Exhibit 14 in evidence, your Honor.

MR. FOLEY: I object to this exhibit, your Honor. We have never seen these documents. There is a calculation of nine hundred twenty point seventy-six and a whole batch of invoices we have never seen in this case. It is utter surprise to us even though we had extensive discovery.

THE COURT: Well, they were only taken last month, weren't they?

THE WITNESS: Yes, sir.

THE COURT: I would sustain the objection, counsel.

MR. WENTZEL: Your Honor, the final calculation was made last month. These are all invoices that go back to 1972.

THE COURT: Well, they weren't furnished to counsel during a long period of time.

MR. WENTZEL: They were not requested, your Honor.

MR. FOLEY: Oh, well, your Honor, I disagree with that. We had extensive interrogatories and depositions here on every phase. We had interrogatories --

THE COURT: I sustain the objection.

MR. FOLEY: Thank you.

THE COURT: Exhibit 14 is not received.

BY MR. WENTZEL:

Q Now, in the course of returning the flashlights to Piles Wonder, did Garrity incur shipping charges?

A Yes. I have a freight bill here from Hawk of Connecticut, Incorporated where we shipped to Germanic Bonded Warehouse on 4 Edder Road, West Haven, Connecticut, one thousand two hundred thirty-four cartons of flashlights for a total cost of one hundred seventy-seven dollars thirty-one cents plus a freight and labor charge of twenty-seven dollars forty-five cents on our Invoice No.

7594 where we used our own truck.

Q What is the total amount of those charges?

A The combined total of those two items is two hundred four dollars seventy-six cents.

THE COURT: You said there were some number of carton.

THE WITNESS: One thousand two hundred thirty-four cartons there, sir.

THE COURT: Thank you.

BY MR. WENTZEL:

Q May I see those documents?

A (Hands documents.)

MR. WENTZEL: All right, your Honor. It turns out that those are copies of documents which are already part of Exhibit 12, Plaintiff's Exhibit 12. Did you want to check that, Mr. Foley?

MR. FOLEY: No. That's all right. No objection.

BY MR. WENTZEL:

Q Mr. Chymeryz, were there any unused advertising materials and displays as a result of not being able to sell the complete inventory of Garrity's disposable flashlights?

A Yes, sir.

Q Could you explain the nature of those materials?

A These would be in the nature of unused displays such as a brown vinyl ad specialty kit of which they would put the lamp into, a lamp mailer, a gift box mailer, components of partitions, master cartons, chip board partitions and dump bins.

Q Have you made an inventory schedule of the items?

A An inventory schedule was taken.

THE COURT: No. The question was: Did you?

THE WITNESS: Personally myself, no, sir. Under my direction an inventory was taken.

BY MR. WENTZEL:

Q Can you identify the items and the class of those items to Garrity Industries?

A The brown vinyl ad specialty kit. The dollars involved were one thousand five hundred twenty-four dollars ninety-two cents. The lamp mailer amounted to forty-eight dollars eighty cents. A five-piece ad specialty kit totaled two thousand four hundred fourteen dollars ten cents. A gift box mailer totaled three hundred thirty-three dollars fifty cents. The components of the partitions and master cartons amounted to four hundred sixteen dollars twenty-seven cents. The chip board partitions totaled three hundred forty-four dollars forty-cents. The dump bins totaled one thousand seventy dollars fifty cents for a grand total of six thousand one hundred five-two dollars forty-nine cents. These are details behind it all, invoices from the customers, whatever (hands documents) and samples where I could attach them to it.

MR. WENTZEL: Would you mark this for identification?

THE CLERK: Plaintiff's Exhibit 15 for identification.

(Inventories marked Plaintiff's Exhibit 15 for identification.)

BY MR. WENTZEL:

Q Would you tell us again what Plaintiff's Exhibit 15 for identification is, Mr. Chymarys?

THE COURT: What is that again, please?

BY MR. WENTZEL:

Q Explain what those documents are.

A These are inventories of items when we stopped selling the Piles Wonder lamp we no longer could use and we had an inventory, and these are our costs.

Q And the particular pieces of paper are what?

A Underneath are invoices from whom we bought, the dollars, the cents and the cover sheet represents the inventory that was taken and the calculation.

MR. WENTZEL: I offer Exhibit 15 in evidence, your Honor.

MR. FOLEY: Your Honor, I object to the admission of 15. We attempted to elicit this type of information way back in the preparation and discovery of this case. We were given the understanding that at that time it was hard to calculate since it was involved with his other one. Now, the record would show, your Honor, that he advertises Pen-Lite and his other products and sometimes combine them. We never could find out how much was allocable to his work here on the Dispos-A-Lamp which was being discontinued, and we have never seen any of this type of material until now, your Honor, and we are facing another situation where everything is calculated at the trial and you never have any indication of what you have to meet. Consequently, we can't agree to that.

MR. WENTZEL: Your Honor, this figure has been in this case, six thousand one hundred fifty-two dollars since the initial answers to interrogatories.

THE COURT: Was it explained in the interrogatories?

MR. WENTZEL: Sure. These were unused advertising materials.

MR. FOLEY: Yes, and that is why we wanted to know how he supported it. Today is the first time we find out.

THE COURT: Did you ask another question to the answers to the interrogatories?

MR. FOLEY: Oh, yes. We took them on deposition. How did they figure these advertising costs.

THE COURT: I will rule on that subject after examining these depositions and things. We will mark it now only for identification.

BY MR. WENTZEL:

Q Now, Mr. Chymerys, I would like to focus your attention for a moment on the returns from customers, Garrity's customers. Now, were those flashlights that were returned from Garrity's customers initially sold to those customers by Garrity?

A Yes, sir.

Q And what was the selling price?

A Eighty-one cents.

Q How did you establish that?

A From a published Garrity Industries price sell sheet, a price list.

Q Do you have that price list with you?

A Yes, sir. (Hands document.)

MR. WENTZEL: Mr. Foley informs me that he stipulates that the price was eighty-one cents, your Honor.

THE COURT: All right.

MR. WENTZEL: Is that correct, Mr. Foley?

MR. FOLEY: Yes, your Honor. That has been in the case.

MR. WENTZEL: Then I won't need to mark this exhibit.

THE COURT: All right.

BY MR. WENTZEL:

Q Now, as those returns came back to Garrity Industries, did Garrity Industries give any credit to its customers?

A Yes, sir.

Q How much?

A They would be for the eighty-one cent selling price.

Q All right. Now, the landed cost of Garrity Industries was stipulated a moment ago at forty-one cents; is that correct?

A Correct, sir.

Q Were there any expenses in the normal course of selling those items to its customer that Garrity did not incur?

A I don't understand, sir.

Q All right. You are aware from keeping the books and records of Garrity Industries that it has various expenses?

A Correct.

Q And in the course of selling flashlights, for instance, does it pay salesmen's commissions?

A Correct, sir.

Q And were salesmen's commissions paid on these units that were sold to customers and then returned?

A Yes, sir.

Q And it has shipping charges, and were the shipping charges paid?

A Correct.

Q And can you tell us some of the other expenses that Garrity Industries has?

A Well, they would have all the normal operating costs of a going business such as advertising costs, warehouse costs, rental costs, G and A expenses which would cover not only officers' salaries, salaries of the office employees, taxes, pension costs, all the normal operating costs.

Q And were all those normal expenses paid in due course?

A Yes, sir.

Q Now, let me turn your attention to the eighty-three thousand units that were returned out of inventory to Piles Wonder. Could you tell us what Garrity Industries lost as a result of not being able to sell those particular eighty-three thousand units?

A They would lose .33317 cents per unit calculated in this particular manner. We had in inventory eighty-three thousand o-two-two units. The difference between the eighty-one cents and the forty-one cents, here again, I can only say my figures will be a little different because I used the .460 as opposed to the forty-one cents.

Q You used the precise figures down to five decimals. We have agreed to round it off here to forty-one cents.

A Yes. The lost profit per unit was .40317 cents each.

Q Which round off to what?

A Forty-one cents.

Q Forty-one?

A Forty cents.

Q Go ahead.

A From this I had subtracted a savings like we didn't have to pay the salesman's commissions of .045 cents each.

Q How did you calculate the salesman's commissions?

A That was based on the commissions that were paid to salesmen and reps. The commissions that we paid to our salesmen were two percent. To our reps we paid seven percent.

THE COURT: Some jurors might not know what "reps" are.

THE WITNESS: They are gentlemen that we hire that are in business for themselves who sell our product. They are not on our payroll.

THE COURT: They sell yours and others?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: They would get a seven percent commission as opposed to a salesman receiving a two percent commission plus a salary.

I turned around and added the two together and came up with an average of .045 cents each.

Q Four and a half cents of salesmen's commissions that you didn't have to pay on those eighty-three thousand?

A Correct, sir. I also deducted the shipping charges. Again, I can only refer to the papers that I had worked up or were worked up by the Traffic Manager of .025 cents each and subtracted that from this lost profit to arrive at a lost profit.

Q Wait. Let me just stop you. That is two and a half cents of shipping charges you didn't have to pay because you didn't have to deliver those goods to your customers?

A Correct.

Q That is a total of seven cents savings --

A Correct.

Q -- to be subtracted from the forty-cent gross profit?

A Correct, sir.

Q And you arrive at what figure?

A At .3317 cents.

Q Which rounds off to?

A Thirty-three and a third.

Q Thirty-three cents?

A Thirty-three cents.

Q On the eighty-three thousand zero-two-two units?

A Correct.

Q And have you multiplied out that figure to get a total for those eighty-three thousand twenty-two units?

A The loss per unit that Garrity Industries would sustain would be twenty-seven thousand six hundred sixty dollars forty-four cents.

THE COURT: Twenty-seven thousand and --

THE WITNESS: Twenty-seven thousand six

hundred sixty dollars forty-four cents.

THE COURT: Thank you. If you sold the eighty-three thousand and there were no returns, using an eight percent profit, how much profit would you have?

THE WITNESS: You are talking about a net profit of eight percent, sir?

THE COURT: Just eight percent of eighty-three thousand is six thousand some odd, is it?

THE WITNESS: Yes. About sixty-four hundred, sixty-five hundred dollars, sir.

THE COURT: You would make six thousand if you sold them and twenty-seven thousand you would lose if you didn't sell them; right?

THE WITNESS: The calculation that I am going on, sir, is not on a net profit basis, but on a gross profit basis before expenses such as general administrative.

THE COURT: Those are the two different figures, are they not?

THE WITNESS: I have a selling price of eighty-one cents, a cost of forty-one cents. All right. That would give me a gross profit of forty cents. From that forty cents --

THE COURT: No. I am saying if you used the profit of eight percent per unit, you would have a profit of sixty-six hundred dollars, would you not?

THE WITNESS: Net profit after all expenses.

THE COURT: A profit of sixty-six hundred dollars. If the profit was eight percent and you sold eighty-three thousand, you would have sixty-six hundred dollars profit?

THE WITNESS: Right.

THE COURT: Whether it is gross or net is something else.

THE WITNESS: Yes, sir.

THE COURT: If you didn't sell them, you would have a loss of twenty-seven thousand six hundred sixty dollars; is that right?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

BY MR. WENTZEL:

Q Mr. Chymerys, would Garrity Industries have incurred any additional expense in the normal course of business if the units which were returned to its customers had not been returned, had not been defective? Would there have been any additional expense that Garrity Industries would have had to pay?

A Could you just repeat that, please?

Q If the units had not been returned from the customers, Garrity Industries would have had eighty-one cents per unit in its treasury from those customers; correct?

A Correct.

Q And would there have been any additional expense other than what was paid in the normal course of business to Garrity Industries?

A No, sir.

Q So it is out-of-pocket that eighty-one cents that it returned back?

A Yes, sir.

Q Now, in the items that were returned to Piles Wonder from Garrity Industries' inventory, those had not been returned to Piles Wonder and Garrity had been able to sell them to its customers, again, it would have received eighty-one cents per unit; is that correct?

A Correct, sir.

Q All right. And you told us that there would have been some additional items of expense, salesmen's commissions and shipping charges?

A Correct.

Q Other than those units would Garrity Industries have received thirty-three cents per unit?

A Yes, sir.

Q And so it is out-of-pocket that thirty-three cents per unit on every one of those units?

A Yes, sir.

MR. WENTZEL: I have no further questions.

THE COURT: Cross?

MR. FOLEY: Your Honor, at this time I would like to clear up something in connection with the proposed expense of advertising.

THE COURT: Well, is this proper in front of the jury? Is it some statement you are going to make or what now? Does it relate to some agreement?

MR. FOLEY: You asked me to verify whether I had elicited that type of information in the past, and I haven't.

THE COURT: I would reserve that until I can see some other matter that the jury won't have to concern itself with.

MR. FOLEY: All right.

CROSS-EXAMINATION

BY MR. FOLEY:

Q Mr. Chymeryz, let's assume the case of the eighty-three thousand flashlights in your inventory. Had you sold them for eighty-one cents you would receive forty percent profit; is that what you say?

A Forty percent profit? Approximately, yes, sir.

Q What are the items that make up that forty cents?

A Those would be the landed cost, the duties, the freight, the broker's charges that would give the forty-one cent cost.

Q All right. Aren't the landed costs included in the forty-one cents that you pay to acquire them?

A Yes, sir.

Q All right. Now, you add forty cents on top of forty-one cents to get your profit; correct?

A You would get a selling price.

Q Now, what happens to that forty cents?

A It becomes a gross profit that pays part of the expenses of running Garrity Industries.

Q And out of that you realize a net profit of eight percent?

A Yes, sir.

Q All right. If you were given eight percent on the eighty-three thousand lights that you had in inventory, you would not have these other expenses, would you?

A They are there and they are part of doing business as a whole in relation to other products that are being sold.

Q But aren't you in a good position if you get your eight percent overall net profit?

A No because I am really technically losing at this particular point on this particular product.

Q But you haven't paid any expenses out to sell them at that point, have you, while they're in inventory?

A Correct.

Q You haven't paid the people, you haven't shipped them, the cost is out to distributors.

A Can I just say this? There is a continuing cost of doing business and you pay people no matter what. Whether I sell this particular product or another product, these costs continue. Therefore, the cost is incurred. If you are looking at it from the standpoint of a product line item and say "How do I relate this total cost to every product that is being sold?" would lead to many questions.

Q Well, actually, to sum this up then your gross profit, that takes into consideration many items including the expense of sale; is that correct?

A The gross profit, sir.

MR. WENTZEL: Excuse me, your Honor.

THE COURT: No. He wanted to know whether what he said is true. You agree or disagree?

MR. WENTZEL: Could I ask a question? I thought I heard a predicate at the beginning of this line, that this question was directed at the eighty-three thousand units in inventory, and I think we ought to clear that up.

THE COURT: No. He is talking now about something else. This is just a general question as I understood it.

MR. WENTZEL: On those eighty-three thousand we just took out.

THE COURT: No. He is talking just about profit. Supposing you start again, Mr. Foley.

BY MR. FOLEY:

Q Does your gross profit of forty cents take into consideration the expense of sale?

A If you are saying the amounts paid to the salesmen for commission, no, sir.

Q Does it represent the amounts to ship them out?

A No, sir.

Q All right. Tell me again what is made up in the forty cents?

A The forty-cent cost to Garrity Industries is made up of lamp cost, ocean freight, duties and broker's fees.

Q Haven't we already gotten the landed cost in the forty-one cents that you paid?

A Correct. If I take the forty-one cents and subtract it from the eighty-one cents, I make a gross profit of forty cents before any expenses, such as salesmen's commissions, freight or whatever may be applicable to that to arrive at a net profit.

Q Freight out of Garrity Industries?

A Correct, sir.

Q All right. But the nineteen cents for landed costs, are they in the forty cents too?

A I don't think -- I can't understand, sir. If I may apologize. The profit of forty cents is a pure figure after the costs, the landed costs are taken out of my selling price.

Q You've got to get your nineteen cents landed cost back; is that correct?

A Correct, sir.

Q Yes. Well, then isn't Piles Wonder giving you the landed cost back?

MR. WENTZEL: Excuse me. I don't know what this nineteen cents is. We stipulated the landed cost was forty-one cents.

THE COURT: I don't know either, but I would make a guess it is the difference between the cost F.O.B. Le Havre and getting it out of customs.

MR. FOLEY: It is the difference in the cost of a light, twenty-two cents, nineteen cents to get it over here and get it to Le Havre.

Now, your Honor, I want to pursue this.

BY MR. FOLEY:

Q You have to get that nineteen cents back, don't you?

A You always have to recover your cost.

Q And that is in your forty-cent gross profit?

A No. I just don't quite follow what you are trying to arrive at, sir.

Q How do you get back the nineteen cents that you paid to get the lights to the United States?

A When I sell an item to a customer for eighty-one cents, okay, I recover my cost of forty-one cents to arrive at a gross profit of forty cents. So if I sold it at eighty-one, I have recovered my total cost of forty-one cents to arrive at a gross profit of forty cents before applying any type of expenses such as salesmen's expenses, advertising expenses, G and A expenses, to arrive at a net profit. So I have recovered my forty-one cents of the landed lamp cost, the duties, the brokers, to arrive at the forty-cent gross profit.

Q But you do not need that forty cents on the eighty-three thousand you still had in inventory; is that correct? They haven't gone anyplace.

A But I have not sold those, but I have lost that profit because the potential has been there that this inventory that we bought from Piles Wonder was to be sold. If we did not sell it, frankly, I have lost a lot of money.

Other items that I have not taken into consideration such as this would be personal property taxes, real estate taxes that I would have to pay in addition to these items.

THE COURT: Does your lease require you to pay real estate taxes?

THE WITNESS: Yes, sir. We have to pay for the property, yes, sir.

THE COURT: Real estate taxes?

THE WITNESS: Yes, sir. We also have to file with the City of Stamford --

THE COURT: No. I didn't ask you what you had to file. I asked you if you remembered whether the lease provided that the tenant pay the taxes. The answer is "yes"?

THE WITNESS: Yes, sir.

THE COURT: Thank you.

MR. FOLEY: All right. I will get to another subject, your Honor.

BY MR. FOLEY:

Q Now, Mr. Chymeryz, you said you were the

Controller. Now, are you responsible for the payment of bills?

A Am I responsible for the payment of bills? I am responsible to present --

THE COURT: No. The question is: Are you responsible for the payment of bills? Can you answer that yes or no or not?

THE WITNESS: (No response.)

THE COURT: There is no answer. Do you have another question?

BY MR. FOLEY:

Q You have no answer?

A I can only say this --

THE COURT: You can't answer it yes or no?

THE WITNESS: May I qualify it by --

THE COURT: Then you can't answer it yes or no? Tell us you can't answer that yes or no.

THE WITNESS: I can't answer it yes or no.

THE COURT: All right.

BY MR. FOLEY:

Q Do you ever receive special instructions with respect to the payment of bills?

A Yes, sir.

Q Were you familiar with the transactions with Piles Wonder which involved the invoices here in suit?

A Yes, sir.

Q Did you ever receive any instructions not to pay those bills?

A I was instructed not to pay the bills, yes, sir.

Q Now, I think you testified before in response to Mr. Wentzel's question that the return of some one hundred fifty-two thousand in May and October of 1973 were never tendered back to Garrity by Piles Wonder; is that correct?

A To the best of my knowledge, no, sir.

Q They were not. Let me ask you whether or not in May of 1973 or thereafter so far as you know, did Garrity sell a disposable lamp made by Piles Wonder?

A What was the date again, please?

THE COURT: After what date?

BY MR. FOLEY:

Q After May, 1973.

A I would say I really don't know offhand without checking the records, sir.

Q Well, let me see if I can help you. I show you a document that we got in discovery here and it is Garrity Deposition Exhibit 32, and I will ask if you have ever seen that?

A I would say it would be passed out internally. It is a sales bulletin.

THE COURT: The question is, Mr. Witness: Have you ever seen that piece of paper?

THE WITNESS: I would say yes, sir.

THE COURT: Yes, he says. All right.

MR. FOLEY: Let me mark this, please.

THE CLERK: Defendant's Exhibit E for identification.

(Sales bulletin dated 1-26-73 marked Defendant's Exhibit E for identification.)

MR. FOLEY: I offer this.

MR. WENTZEL: No objection.

MR. FOLEY: May I read this, your Honor?

THE COURT: Let the girl mark it.

(Sales bulletin dated 1-26-73 received and marked Defendant's Exhibit E.)

MR. FOLEY: This is entitled Sales Bulletin. It is dated 1-26-73.

"To all Salesmen, Reg. Managers and all Reps."

THE WITNESS: That would be Regional Managers.

MR. FOLEY: Regional Managers and all representatives, I assume, from Sales Headquarters.

"Old Dispoz-A-Lamp discontinued because

quality of product has deteriorated from a supplier in France. We are taking this product off sale. It has always been the intent of your company to bring the finest quality and most up-to-date product to market. The Dispoz-A-Lamp fits neither of these objectives. The Mark IV is the ideal replacement and most distributors have changed their orders. Mark IV lamp has the ultimate in design, the vibrant colors most appealing to the woman shopper. Mark IV is a high intensity lamp capable of throwing a beam one hundred yards or more. The pistol grip is unique. The No. 1440 display is a winner all the way. Most important, the Mark IV has the most phenomenal track record any flashlight could ever hope to achieve. A complete sellout within six weeks of its introduction. We have and I know you have been swamped with requests from your accounts to ship Mark IV. Caldor's, the Stamford discount chain just placed an order for three thousand dozen to be delivered in May.

The conversion of your account from Dispoz-A-Lamp to Mark IV absolutely should be a very easy job. Sell now against March 15th shipping date. Distribution made in April and May will be kicking off the outdoor season of camping, boating and general outdoor life."

Q Now, Mr. Chymerys, had Wonder tendered back any of the inventory that you had turned over to it, do you believe Garrity Industries would have sold those old Dispoz-A-Lamps in September of '73?

A Sir, this I couldn't make a decision on. I would have to follow the instructions of management.

Q Now, we have testimony here of the number of lights returned. The testimony has been you had many in your inventory and many had come back from your customers. Now, do you know whether or not any that have been returned from your customers were in unopened cases?

A Sir, I don't know.

Q Do you know whether or not Garrity Industries had ever advised its representatives or wholesalers to send such lights back?

A Sir, I don't know.

Q Do you know whether or not all that came back were defective?

A Personally, no, sir.

Q Were you familiar with the agreement in the spring of 1973 under which the returns were made?

THE COURT: What was that again, please?

BY MR. FOLEY:

Q Were you familiar with the agreement made in the spring of '73 under which these returns were made?

A Could you just refresh my memory as to what that --

THE COURT: He is suggesting there was an agreement between your boss and the other company to return some lights and what the conditions were of that.

THE WITNESS: I may have been made aware of it, but offhand, I don't have anything in my papers or files.

BY MR. FOLEY:

Q Well, you are aware that Garrity Industries was tendered or was given forty-one cents credit per return of flashlights; is that correct?

A Sir, I can only say this: I have not seen a credit memo or anything else representing that forty-one cents outside of our billing to Piles Wonder.

Q You haven't seen any of the correspondence along these lines?

A No.

Q Now, do you know how many of the flashlights that were in your inventory and which came from your customers were 1972 production?

THE COURT: '72 or '73?

MR. FOLEY: '72.

THE WITNESS: Sir, I would have no way of knowing. You are asking me a question I don't know.

BY MR. FOLEY:

Q All right. Now, were you familiar with the guarantee that was printed on the back portion of the packaging, blister packaging associated with the Dispoz-A-Lamp from Piles Wonder?

A Yes, sir.

Q Do you have any records indicating any persons who sent in Dispoz-A-Lamps that had been worn out or were defective with a dollar for a new one?

A I have nothing specific, but I would say I'm sure there were some.

THE COURT: No. The question was: Do you have anything that we can point to or read indicating how many people sent the thing back with a dollar?

THE WITNESS: No, sir.

THE COURT: If they did, you would have to put that dollar in some journal, wouldn't you, or something?

THE WITNESS: It would have to be recorded and --

THE COURT: Have you any recollection of any dollar records in your journal?

THE WITNESS: I would say, sir -- I myself didn't handle the journal, but I would say there were some returned. How many I couldn't say.

THE COURT: But are you familiar with the journal during '73? Wouldn't you go over that every week?

THE WITNESS: No because I just get a readout. I wouldn't be interested, basically, in individual items. I would be interested in the whole relative to certain aspects.

THE COURT: You are telling me you wouldn't look at the journal as such?

THE WITNESS: Correct, sir.

THE COURT: All right.

BY MR. FOLEY:

Q Well, Mr. Chymeryz, how would that be handled if someone sent in a dollar?

A It would come in, the dollar would be taken, a shipping notice would be made up for that particular individual, it would go out to the warehouse, it would be packed, mailed and the dollar would be deposited in the bank.

THE COURT: What book of the company would it be recorded?

THE WITNESS: In the sales journal, in the cash receipts journal.

THE COURT: I see. You didn't bring them, did you?

THE WITNESS: No, sir.

MR. FOLEY: Your Honor, there is a letter --

THE COURT: Counsel, just ask questions, if you will.

MR. FOLEY: I want to pass this point. There is a letter from counsel for Garrity Industries that they have no such records.

THE COURT: Is there a stipulation to that effect?

MR. FOLEY: Mr. Wentzel?

THE COURT: Is that true, Mr. Wentzel?

MR. WENTZEL: I didn't write such a letter, but if Mr. Foley says that one of my associates did, then I would assume that means that we checked the records and found no such dollars.

MR. FOLEY: Well, we pursued this quite awhile, your Honor, and -- (hands document).

MR. WENTZEL: Yes. Fine. Apparently, there were no such returns.

MR. FOLEY: I would like to mark this, your Honor.

THE COURT: There were no such return, is that what you say or no such record?

MR. FOLEY: There are no such records. I would like to mark this, your Honor.

THE CLERK: Defendant's Exhibit F.

THE COURT: Do you have any objections to the letter, Mr. Wentzel?

MR. WENTZEL: No, your Honor.

THE COURT: F received as an exhibit.

(Letter dated April 4, 1975 received and marked Defendant's Exhibit F.)

MR. FOLEY: I will just read this first portion.

THE COURT: The date, please?

MR. FOLEY: April 4, 1975, and I will just read the first paragraph, your Honor. It is pertinent. This is addressed to me from James Shaughnessy of the firm of Casey, Lane and Mittendorf who is with Mr. Wentzel.

"Dear Jim:" That's me. "As I told you on the telephone this morning, Garrity Industries has no records evidencing any returns of Dispos-A-Lamps enclosing one dollar pursuant to its guarantee contained on the blister packaging since, apparently, there were no such returns.

BY MR. FOLEY:

Q Now, Mr. Chymeryz, you were giving some warehouse calculations before on storage. Do you recall that, in on space, and eliciting charge applicable. Did you personally inspect the manner in which the lights that were in inventory were stacked in the warehouse?

A They were put in normal cartons of -- I believe there are --

THE COURT: No. He said the way they were stacked. Do you know how they were stacked?

THE WITNESS: No, sir. Personally, I didn't see them.

THE COURT: That's why you don't know.

THE WITNESS: I could not say, sir.

BY MR. FOLEY:

Q Now, was your calculation based upon any particular method of stacking these or --

A No.

Q -- positioning them?

A It was based on a carton, the number of square feet per carton in relation to the number of cartons that were in inventory at that particular time.

THE COURT: Yes, but Mr. Foley is suggesting, I think, that you made the calculation on the theory that they were all laid on the bottom of the floor and that square feet was then calculated and then multiplied by something else, and he is going to suggest to you that that is not the way they were stacked. They were stacked on top of one another and that square feet theory of yours would not be right. Did I guess it?

MR. FOLEY: That's exactly my next question.

THE COURT: The man doesn't know.

BY MR. FOLEY:

Q Now, so far as you know, Mr. Chymeryz, did Garrity Industries ever sell a Piles Wonder Dispoz-A-Lamp for a price under eighty-one cents?

A To my knowledge, no, sir, unless it was on a promotion of some sort. It's possible, but offhand I just don't recollect. I would have to look at the record really to be specific and answer the question that you have asked. I really don't know.

Q Well, what do you mean by a promotion?

A In other words, they give a -- well, like the current promotion that they may have on lighters. The normal selling price of a lighter, to give an example, would be, say, a dollar to our distributor. We would give him ten percent off as a promotional allowance, advertising allowance or whatever it is. So that would come off the dollar selling price and we would sell it then for ninety cents. We would recover -- we would sell it for a dollar, but only get ninety cents on a dollar back.

Q Well, was there ever or is there ever a case involving a promotion where the net selling price such as eighty-one cents is averaged down?

A Citing the example that I just got through saying, yes, it can happen.

Q All right. Well, did you ever hear of any promotion involving the giving of Dispoz-A-Lamp, Piles Wonder's lights away along with the Mark IV light?

A Sir, this I don't know.

MR. FOLEY: That's all, your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Chymeryz, let me just ask you about this one-dollar guarantee. First of all, you recall this morning Mr. Foley showed Mr. Garrity --

THE COURT: No. That is bad.

MR. WENTZEL: All right.

THE COURT: You can show it to this witness, if you will.

BY MR. WENTZEL:

Q Let me show you Defendant's Exhibit C, which is the Dispoz-A-Lamp Mark IV; is that correct?

A Correct, sir.

Q What kind of package do you call that?

A Blister packaging.

Q You call it blister because of this plastic?

A Cellophane.

Q Cellophane wrapping?

A Yes, sir.

THE COURT: Is there any way to open that?

THE WITNESS: No. Outside of using a knife or razor blade, I have had a tough time.

THE COURT: You never broke your nail or anything?

THE WITNESS: That I have, sir, yes.

BY MR. WENTZEL:

Q Did Garrity Industries sell Dispoz-A-Lamp packaged in any other way? I am not referring to Mark IV now. I am talking now about the Dispoz-A-Lamp manufactured by Wonder.

A Yes. They used to be sold in a display which is a cardboard display with certain art work on the side of it and packed twelve per display inside, but not on the blister pack. They're sort of without a blister pack.

They're just packed in displays.

Q And did the displays of twelve packs have the guarantee?

A No, sir. Not to my knowledge.

THE COURT: You mean on the literature? Is that what you mean?

THE WITNESS: On the regular display of which the twelve were packaged inside.

THE COURT: Supposing you took out each one in turn, would you see the guarantee on the bottom of each one?

THE WITNESS: No, sir because it's only on the blister packaged merchandise.

THE COURT: Oh, so what you are saying is the other method of selling it would put twelve on a display column?

THE WITNESS: Just loose.

THE COURT: And there would only be the guarantee or the return business would be on the literature, but not on each individual package?

THE WITNESS: Correct, sir.

THE COURT: Thank you.

BY MR. WENTZEL:

Q Wait a minute. Even on the display carton surrounding the twelve lamps in the carton, was there any guarantee then?

A To my knowledge, no, sir.

THE COURT: I misunderstood you then.

BY MR. WENTZEL:

Q It was only when they were sold in the blister packs?

A Are we talking about the guarantee for the dollar or the guarantee of the lamp?

Q The dollar reference.

A (Witness shakes head.)

THE COURT: The answer is "no"?

THE WITNESS: Correct.

BY MR. WENTZEL:

Q Now, of the four hundred eighty thousand units delivered to Garrity Industries from April to July, 1972 which we have been speaking of today, which contained the defective units --

THE COURT: Well, no, wait. There is no testimony that they were all defective.

MR. WENTZEL: I said which contained the defective units, however many there were.

THE COURT: All right.

BY MR. WENTZEL:

Q Were any of those four hundred eighty thousand individual blister pack units?

A Could you repeat the question, please? I didn't quite follow.

Q Of the four hundred eighty thousand odd units delivered by Piles Wonder to Garrity Industries in 1972 that we have been talking about today, those are the ones that the invoices are not paid on?

A Correct.

Q Were any of those blister packs?

A I would say yes, sir.

Q You think they were?

A I would say there were some.

Q Have you examined the invoices to determine that?

MR. FOLEY: Your Honor, he has been leading him and he got the wrong answer, and I object to that.

THE COURT: Well, it's all right. He wants to know now, your lawyer, did you examine the invoices before you answered?

THE WITNESS: Did I examine all the invoices?

THE COURT: Do you have trouble hearing?

THE WITNESS: No.

THE COURT: No, he did not, sir.

THE WITNESS: I just don't mind saying I am a little nervous, sir.

MR. WENTZEL: Your Honor, I will drop that one.

THE COURT: You are not the first one.

THE WITNESS: I understand.

MR. WENTZEL: We will put those invoices in.

MR. FOLEY: Let me ask one question.

THE COURT: Are you finished, Mr. Wentzel?

MR. FOLEY: I thought he said he was finished. I'm sorry.

MR. WENTZEL: I just said I dropped that subject.

MR. FOLEY: I'm sorry.

MR. WENTZEL: I have no further questions.

THE COURT: You have one you said, Mr. Foley?

RECROSS-EXAMINATION

BY MR. FOLEY:

Q Do you know who did the blister packing?

A Not without checking records I wouldn't know, sir.

THE COURT: That's all, gentlemen?

MR. FOLEY: Yes, sir.

THE COURT: All right. We will take our recess now for a few minutes.

(Court recessed at 2:45 p.m. and reconvened at 2:55 p.m.).

THE COURT: All right, sir, please.

MR. WENTZEL: Your Honor, at this time I have some portions of the deposition of the defendants --

THE COURT: When you read them, tell the jury who the man was that was deposed, where he was deposed, when he was deposed and who appeared.

MR. WENTZEL: Your Honor, may I sit up in the witness chair to read them?

THE COURT: Are you going to have somebody read them to you?

MR. WENTZEL: We can do it either way.

THE COURT: Do it your way. Some lawyers read them all by themselves. Some lawyers act as the witness.

MR. WENTZEL: My problem is I only have one copy.

THE COURT: Do it anyway you want.

MR. WENTZEL: I will read it from here. This is the deposition of Mark Sternlicht taken on March 21, 1974 at the offices of Pennie & Edmonds, 330 Madison Avenue, New York. The questions were asked by James M. Shaughnessy who is an associate of my firm, counsel for the plaintiff.

Mr. Foley, I will --

THE COURT: Was somebody else present representing the defendant?

MR. WENTZEL: Yes. Mr. Foley and a Mr. Mullinger from his firm were both present representing the defendant.

Mr. Foley, I will give you the page and line of each passage that I am reading from.

Page 3, line 19.

"Q Please state your full name.

"A Mark Sternlicht.

"Q Where do you reside?

"A 269 Sawmill Road, Stamford, Connecticut 06903.

"Q Mr. Sternlicht, by whom are you employed?

"A Wonder Corporation of America.

"Q How long have you been employed by that corporation?

"A Since its inception which was in August of 1971.

"Q Prior to your employment by Wonder Corporation of America, were you employed by Society Les Piles Wonder?

"A Yes, sir.

"Q How long were you employed by them?

"A Approximately eight months.

MR. WENTZEL: Turning to Page 6, line 2.

"Q Is Wonder Corporation of America a subsidiary of Society Les Piles Wonder?

"A Yes, sir.

"Q Generally, without getting specific at all, what types of products does Wonder Corporation of America market?

"A In the United States?

"Q In the United States?

"A Flashlights, safety lights, lanterns and batteries.

"Q At the present time in the United States does Wonder Corporation of America market disposable flashlights?

"A Yes, sir.

"Q How many different varities of disposable flashlights?

"A At the present time, two.

"Q Is one of the two types of disposable flashlights the Luebox disposable flashlight?

"A Yes, sir.

"Q When did Wonder Corporation of America commence marketing the Luebox disposable flashlig in the United States?

"A Approximately March of 1973.

MR. WENTZEL: Page 21, line 19.

"Q Did there come a time in the summer of 1972 when a complaint by Mr. Garrity about the defective flashlights was brought to your attention?

"A Yes, sir.

"Q Do you recall approximately when you first heard of Mr. Garrity's complaint?

"A There is, I think, a letter in which Mr. Garrity informed Mr. Courtecuisse that he has found a problem with the flashlights. I think it's in August.

"Q Mr. Sternlicht, I show you and Mr. Foley Plaintiff's Exhibit 3."

MR. WENTZEL: I might note for the record that that has been marked in evidence as Plaintiff's Exhibit 1 here at the trial. Is that correct, Mr. Foley?

MR. FOLEY: I am lost here. Are we still on Page 22?

THE COURT: 21, line 19 it started.

MR. WENTZEL: Yes.

MR. FOLEY: You went over to 22.

MR. WENTZEL: Yes.

MR. FOLEY: All right. Go on.

THE COURT: Exhibit 3 is now 1, you say?

MR. WENTZEL: Yes. 1 in evidence at the trial.

MR. WENTZEL: "Q Mr. Sternlicht, I show you and Mr. Foley Plaintiff's Exhibit 3 and ask you if that is a copy of the letter to which you just referred?

"A Yes, sir.

"Q Now, following your receipt of this letter of August 25, 1972, did you and Mr. Bertin have a meeting with Mr. Garrity in his office to discuss the subject of that letter?

"A Yes, sir.

"Q Can you tell me approximately how long in weeks or months after that letter you and Mr. Bertin met Mr. Garrity in his office?

"A I think very shortly after. Mr. Bertin's visit to the United States at that time was not to deal with this problem because we did not know we had the problem. It was a routine visit to the subsidiary, and we were informed while he was here that the letter was received in France. So I would imagine it would have had to

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be very soon thereafter.

"Q Aside from yourself and Mr. Bertin and Mr. Garrity, was anyone else present at that meeting?

"A I think some people -- Mr. Garrity may have called in some people in and out of the room, but essentially, no.

"Q How long a meeting was this?

"A A couple of hours.

"Q I would like you to tell us to the best of your recollection what was said during that meeting, and I don't just mean the subject matter wise. I would like to get to the best of your recollection what was said during the course of the meeting."

Skipping to Line 25:

"A Well, I think I probably contributed the least to the conversation, but I think Mr. Garrity expressed the feelings he did in the letter of August 25, that he is finding a high percentage of flashlights being defective. I think Mr. Bertin acknowledged that we have had similar problems in Europe, and I think at that time assurances were given to Mr. Garrity that Wonder France would give him full credit for any defectives which he encounters. I don't think we were at that time in a position -- Wonder France was at that time in a position to tell him what the cause of the defect was, but we did, I believe, agree that it was the switch. In other words, we knew that the defect was in the switch, but we did not know what was causing it.

"Q Was anything else discussed during that meeting?

"A I think Mr. Garrity and Mr. Bertin reviewed his future requirements at the same time.

"Q What was said on the subject of future requirements? Do you recall?

"A Not really, no. I think some requirements were given to Mr. Bertin.

"Q Now, getting back to the subject of the defect as was discussed during that meeting, did Mr. Bertin indicate to Mr. Garrity that these other returns or these other problems in Europe, I think you referred to, were caused by the switch as well?

"A Yes, sir.

"Q Did Mr. Bertin inform Mr. Garrity when

Wonder France had begun to incur these problems?

"A I don't recall him giving a specific date, but I think it was within the same time period. Maybe a few months prior.

"Q When you say the same time period, what time period are you referring to?

"A I would say Mr. Garrity began to have indications of the defect in August. August is a month in which our factories are completely closed in France. We close for one month, so I would imagine that Wonder France would have knowledge of the same problem existing sometime prior to August.

"Q Was there any discussion about the fact that Wonder France had not informed Mr. Garrity about these other problems that it had been having other places?

"A I believe Mr. Garrity questioned why this was not done.

"Q What did Mr. Bertin say?

"A Mr. Bertin's answer, if I recall, was that since Mr. Garrity's flashlights were manufactured completely separately from our flashlights, from Wonder France's flashlights, this is because of a different color, the product which Wonder France were marketing in Europe were not the same colors as the one made for Garrity, they had no reason to suspect that the same problem would occur or would exist.

"Q You say there were differences in color. Do you know what those differences in color were, for example?

"A I think they are completely different colors. In other words, I don't --

"Q Well, were the flashlights manufactured for Mr. Garrity all of one color or multiple colors?

"A No. They were assorted colors.

"Q Were the flashlights manufactured for Wonder France all one color or were they a variety?

"A No. Assorted colors.

"Q Aside from the differences in color, were there other differences in the appearance of the flashlight itself?

"A The trademark and the address were different.

"Q Aside from these three things, the color and the trademark and address, were there any other differences?

"A The packaging.

"Q But physically looking at one of Wonder's flashlights, Wonder France's flashlight next to one of the ones that Garrity was selling, aside from the color and the address and the trademark, were they the same? Did they appear to be the same?

"A Yes.

"Q Were the flashlights that were manufactured for Garrity Industries manufactured in a different factory than the flashlights that were manufactured for Wonder France itself?

"A I don't believe so. I don't believe so, but of course, I don't know. Basically, all of Wonder France's flashlights are manufactured in the same factory."

Turning to Page 29, line 2.

"Q Tell us why the switch was defective?

"A It is common practice in manufacturing plastics, injection molded plastics to use scrap as part of the materials which you are molding and the percentage of scrap is controlled to make sure that the finished product does not change mechanically or in appearance. I have been told that without it being properly authorized by the factory the percentage of scrap used in the period where we had the defective problem was increased to the point that the mechanical strength of the plastic changed and it was less than that of a normally manufactured in accordance with the specific product. Apparently, this was done by the night shift foreman who instead of going to get virgin material, was getting scrap. The switch acts on a spring and the spring exercises a mechanical force on a clamp which holds it and that clamp was breaking. If you operate the switch on the light, you would hear a click. That is the spring being depressed fully into one position, and then returning to the other position. Once the clamp broke, the spring could not depress and the switch was, in effect, inoperative. It would not stay on or it would not come back once it was on. So much for the defect.

Now, the repair consisted of reenforcing the part which broke, in effect, and it was done by making a saw cut in the top of the light, inserting a plastic wedge through the cut which bore down on the clamp, and then ultrasonically welding the wedge to the light. The resulting appearance looked like a rib, a very fine rib across the top of the flashlight. It was the same color as the light and it was not obtrusive. It did not detract from the appearance of the light."

Page 40, line 21.

"Q Mr. Sternlicht, I show you and Mr. Foley Plaintiff's Sternlicht Exhibit 8 for identification..."

MR. WENTZEL: And for the record, that document has been marked as Plaintiff's Exhibit 6 here at the trial.

Continuing the question: "Mr. Sternlicht, can you recall if prior to the commencement of this lawsuit you had occasion to see that letter or a copy of the original of that letter?

"A I think I saw the letter when I was in France in November.

"Q November of what year?

"A 1972.

"Q When you were in France in November of 1972, did you have a discussion or discussions with any personnel of Wonder France about the contents of that letter?

"A I think that the contents of that

letter were mentioned in the discussion where I was apprised of the defect and how it occurred. It was part of the same discussion.

"Q Who was present during that conversation or discussion?

"A Certainly Mr. Bertin and Mr. Courtecuisse. I think there were some other people present in the factory when I reviewed the procedure by which to repair the lights.

"Q Now, referring to just that part of the discussion which referred to the contents of Mr. Garrity's letter of November 17th, 1972, would you tell us what was said concerning the subject of the contents of that letter?

"A I think I was asked to explain to Mr. Garrity how the product will be repaired, obtain his approval for the repair, and I think I was told that Wonder France preferred not to ship any more lights until the repair had been made, and the way the repair had been proposed to be done approved by Mr. Garrity.

"Q Now, did you at any time after that conversation tell Mr. Garrity that Wonder France would not ship the two hundred thousand lamps referred to in his letter of November 17, 1972 to him until the repairs had been made to the lamps he had in inventory?

"A No. I don't think so. No."

Page 42, line 18.

"Q Did there come a time in or about January of 1973 when either Wonder U.S. or Wonder France informed Mr. Garrity that Wonder U.S. was going to commence the selling of the Luebox disposable flashlights in the United States?

"A I don't think that the Luebox flashlight was specifically mentioned, but I believe that there is a letter from Mr. Courtecuisse which informs Mr. Garrity that Wonder is going to enter the disposable flashlight market under its own name.

"Q Do you recall the date of that letter?

"A I think it was in January."

Page 45, line 10.

"Q Prior to January 25, 1973, did you have any discussions with anyone at Wonder France about the subject of Mr. Courtecuisse's letter to Mr. Garrity of January 25, 1973?

"A Probably yes.

"Q How many such discussions did you have, if you know, if you remember?

"A I really can't pinpoint the number.

"Q Do you recall if it was more than one?

"A More than one.

"Q Was it less than ten?

"A Probably less than ten.

"Q Did you have any of these discussions with Mr. Courtecuisse?

"A Yes, sir.

"Q Would you say that all of these discussions were with Mr. Courtecuisse among others, say?

"A I would say that Mr. Courtecuisse was certainly apprised of all of these discussions even if he did not participate directly in all of them."

Page 48, line 8.

"Q Now, these several discussions that you have just been telling us about, can you tell us in terms of months and year when the first of those discussions that you had with somebody at Wonder France took place?

"A Probably November. Probably the first time -- well, certainly some of the topics we were discussing as the subject matter occurred, but if you are relating to the discussions which led to our decision to enter the disposable flashlight market under our own name, I would say that the first time this was mentioned to the best of my recollection would be during my visit in November.

"Q November of 1972?

"A Yes, sir."

MR. WENTZEL: Your Honor, that is all we have from Mr. Sternlicht's deposition.

THE COURT: Do you want to read any part of it?

MR. FOLEY: No. I have Mr. Sternlicht. I will put him on, your Honor.

THE COURT: All right. Your next witness, please.

MR. WENTZEL: Your Honor, to save my voice and stop boring the jury with it, I would ask Mr. Dunn to read the next deposition.

MR. DUNN: Gentlemen of the jury, this is a deposition that was taken of Mr. Bernard A. Bertin and was taken on August 13, 1974 at the law offices of Pennie & Edmonds at 330 Madison Avenue in New York City.

Present for Mr. Garrity was the law firm of

Casey, Lane and Mittendorf in the person of James Shaughnessy who also took the first deposition that Mr. Wentzel just read, and for Pennie & Edmonds there were two attorneys, Keefe Mullinger and Joseph Ranalli. Also present at this particular deposition was an interpreter by the name of Mr. George Benzat and Mr. Mark Sternlicht.

As Mr. Wentzel did, I will be reading only portions of the deposition. Commencing on Page 5 at line 6:

"Q For the record, would you please state your full name?

"A Bernard A. Bertin.

"Q Where do you reside?

"A 137 Belleport, Paris, France.

"Q Mr. Bertin, by whom are you employed?

"A By Piles Wonder.

"Q What position do you have with Piles Wonder?

"A I am an executive of the Export Department.

"Q How long have you been employed by Piles Wonder?

"A Twenty years now.

"Q Have you always been employed in the Export Department?

"A Practically, yes."

Turn to Page 7, line 7.

"Q How many factories does Piles Wonder have?

"A We have eight factories now.

"Q Can you tell us where those factories are located?

"A Yes. There is one in St. Jean, the oldest. Then there is one in Verdene where the flashlights are made. There are two in Nuvea. There is one in St. Cyr DuBrow..." My French is very poor, I guess. "...which is near Luvea and we have one in Le Sue. There is one factory in Boun Chateau and we have another factory in Leon. We have two factories in Le Sue."

"Q In any of these factories are disposable flashlights made?

"A In All other factories are making batteries or chemicals for batteries.

"Q Now, in 1968, did your duties include responsibility for export to the United States?

"A Yes.

"Q Did there come a time in 1960 when you met Paul Garrity?

"A Yes.

"Q Do you recall when approximately in the year 1960 that you met Mr. Garrity?

"A I knew him by letter and through Fudor first. We began working for the disposable flashlight for Paul Garrity through Fudor, Incorporated who was already working on Paul Garrity's disposable lighters. This first contact with Fudor occurred in March, 1968, and I personally met Paul Garrity in the fall of '68.

"Q When in the year 1968 to the best of your recollection did Piles Wonder begin selling disposable flashlights through Fudor to Mr. Garrity?

"A This was in September, '68, the 26th, on the Fudor invoice.

"Q Prior to that time had Piles Wonder sold any disposable flashlights in the United States?

"A No.

"Q Prior to 1968 did Piles Wonder sell any disposable flashlights in Canada?

"A No."

Now, turn to Page 18, line 10.

"Q Now, we have been talking this morning about disposable flashlights. The disposable flashlights which were sold first to Fudor, then to Garrity Industries, were they the Luebox disposable flashlights?

"A We used to call Luebox the ones we were selling to other countries with our own trademark. The one we used to sell to Mr. Garrity and Fudor was called -- we have a five letter code name, but of course, it was called on our invoices Dispo, but this name Dispo was not appearing on the flashlight sold to Fudor. The name was Dispoz-A-Lamp. But we used the five first letters.

"Q Now, aside from the trademark, how was the Dispo different than the Luebox?

"A No difference at all. The trademark and packaging was different."

Turn to Page 20, line 5.

"Q Were the colors of the Dispo different than the colors of the Luebox?

"A They were the same at the beginning, four colors, but then we went to -- in France and Europe and other countries we went to a six color display, a six color assortment, and Mr. Garrity preferred to keep the four original colors we had.

"Q Were these four original colors part of the six colors that you were selling the Luebox in?

"A No.

"Q They were different?

"A They were different.

"Q Were the Dispo and the Luebox both manufactured in Verderne?

"A Yes.

"Q Now, at the time that you were negotiating with Fudor, prior to the actual sale of Dispo to them, did you discuss the area, the geographical area in which Garrity Industries would be selling the flashlights?

"A Yes.

"Q Would you tell us what was said on that subject?

"A The United States and then Mr. Garrity said he was going to have the new operation soon in Canada, so we left Canada open for them.

"Q Did Mr. Garrity ever sell the Dispo in

Canada?

"A Not at all. Not so far as I remember.

"Q Did there come a time when Piles Wonder commenced either by itself or through another organization selling Luebox in Canada?

"A Much later on, in the second part of '71, at the time after we told them that we had found an agent in Canada.

"Q Do you recall the name of that agent?

"A Yes.

"Q What was that agent's name?

"A Monsieur Dana Prontreal (sic).

"Q Now, the Luebox that Piles Wonder commenced selling to Mr. Dana Prontreal (sic), were these Luebox sold under the Piles Wonder trademark?

"A Yes.

"Q Is Mr. Dana Prontreal (sic) still selling products with the Piles Wonder trademark?

"A Yes, but not as an exclusive agent.

"Q Who else is selling today products under the Piles Wonder trademark in Canada?

"A Our American subsidiary, Wonder Corporation of America.

"Q When was Wonder Corporation of America established?

"A I don't remember the date, the exact date.

"Q Do you recall if it was sometime in 1971?

"A No. It was later on. This was like the end of '72, so far as I can recall. I can confirm this very easily.

"(Off the record discussion.)

"Q Now, prior to 1972 when Wonder Corporation of America was established, did Societe Les Piles Wonder have a representative in the United States?

"A No.

"Q Do you recall Mr. Sternlicht was first employed by Wonder?

"A Yes.

"Q When?

"A January of 1971.

"Q And at that time was Mr. Sternlicht actually employed by the Societe Les Piles Wonder?

"A He was employed by Societe Les Piles Wonder.

"Q Is Mr. Sternlicht still employed by Societe Les Piles Wonder?

"A Not directly, no. He is employed by the subsidiary, Wonder Corporation of America.

"Q Was Mr. Sternlicht employed by Societe Les Piles Wonder from January 1971 to the establishment of Wonder Corporation of America?

"A Until the establishment of Wonder Corporation of America.

"Q Now, in September or October of 1968 when you first started selling the Dispo to Fudor, was Societe Les Piles Wonder selling any other products in the United States?

"A Yes.

"Q What products were you selling in the United States at that time?

"A We had been selling in small quantities certain arm lights for bicycles. That was the only product we had been selling to bicycle dealers.

"Q Was Societe Les Piles Wonder selling these arm lights on a direct basis to dealers?

"A Yes.

"Q Aside from the arm lights in 1968, were you selling any other products?

"A No.

"Q In September and October of 1968, did

Societe Les Piles Wonder sell any products at all in Canada?

"A No, but we were looking for an agent in Canada, and we stopped our search then as soon as Mr. Garrity told us he was going to open a subsidiary in Canada.

"Q Do you know if Mr. Garrity is at the present time either himself or through Garrity Industries selling any disposable flashlights today?

"A Today? We know he has his own disposable flashlight.

"Q Do you know when Mr. Garrity or Garrity Industries began selling that disposable flashlight?

"A I think he began selling in 1972. So far as I remember, the end of 1972.

"Q Is this the disposable lamp Mark IV, is that the one that Mr. Garrity is selling?

"A Yes.

"Q Do you know if Mr. Garrity is selling the disposable lamp Mark IV in Canada today?

"A I don't know.

"Q Is the Societe Les Piles Wonder either through itself or Wonder Corporation of America selling the Luebox disposable flashlight in the United States today?

"A Today, yes.

"Q Is the Luebox being sold under the trademark Luebox?

"A No. The trademark Endura."

We now proceed to Page 26, line 12.

"Q Is the Endura being sold in the United States by Wonder Corporation of America?

"A Yes.

"Q Are any other distributors aside from Wonder Corporation of America selling Endura in the United States?

"A No.

"Q When did Wonder Corporation of America begin selling Endura in the United States?

"A Since the beginning of 1973 -- no. July of '73. This I am not exactly sure.

"Q Is the Endura being sold in Canada today by Wonder Corporation of America?

"A Yes.

"Q Is any other distributor selling the Endura in Canada today?

"A Just Wonder Corporation of America. That's all.

"Q Is Monsieur Dana Prontreal (sic) selling Endura in Canada?

"A He is selling it by buying it from Wonder Corporation of America."

Next, Page 30, line 11.

"Q I believe you testified earlier that Mr. Sternlicht was first employed by Societe Les Piles Wonder sometime in 1971?

"A In January of '71.

"Q When did you first meet Mr. Sternlicht?

"A Personally, I met him in the course of 1970, the beginning, and then again in November of 1970.

"Q Was Mr. Sternlicht hired by Societe Les Piles Wonder to work in the United States?

"A Yes.

"Q Would you tell us what Mr. Sternlicht's duties were in January of 1971 when he was first hired by Societe Les Piles Wonder?

"A To prepare the incorporation of the subsidiary.

"Q In the United States?

"A Yes.

"Q Aside from preparing for the incorporation of the subsidiary, did he have any other duties in the United States?

"A Making a marketing survey.

"Q A marketing survey to determine the saleability of Societe Les Piles Wonder products?

"A Of our products in general.

"Q In January of '71 then when Mr. Sternlicht was first hired, did Societe Les Piles Wonder desire to develop a market for a range of its products in the United States?

"A Yes."

We now proceed to Page 34, line 13.

"Q Did there ever come a time when Mr. Garrity requested Societe Les Piles Wonder to manufacture products for him, products that he had designed?

"A He asked about two products so far as I remember.

"Q What products were those?

"A He wanted a small disposable lamp which he didn't take when we first presented it to him because he thought it was too expensive. This product was called The Smart and the second product called by him and by us a pistol lamp, in the shape of a pistol. When he knew the investment, what the cost would involve when made exclusively for him --

"Q Did he provide Societe Les Piles Wonder with designs for this pistol lamp?

"A A rough design because he just gave us the shape that he wanted, but all the inside had to be provided by us and studies by us.

"Q Did Societe Les Piles Wonder then give him an estimate of the cost of the product?

"A I do remember in the report on one of our meetings we gave him the price, the cost of the investment for the mold and so on.

"Q Does this pistol lamp that Mr. Garrity proposed at that time resemble in shape the Mark IV disposable lamp?

"A Not exactly. Partly, but not exactly the same.

"Q Did Societe Les Piles Wonder manufacture any sort of disposable flashlight with a pistol shape?

"A No."

Proceed to Page 43, line 18.

"Q In or about the summer of 1972, did it come to your attention that Mr. Garrity had complained about the quality of the Dispo that he was receiving?

"A The only complaint we had -- the first complaint we had was received on the first of September, 1972 while I was here.

"Q You were in the United States on September 1st, 1972?

"A Yes.

"Q At that time it came to your attention that Mr. Garrity had complained about --

"A Mr. Garrity sent a letter to Mr. Courtecuisse and since I was here, Mr. Courtecuisse asked me by Telex to go and visit Mr. Garrity with Mr. Sternlicht.

"Q Now, I show you a document which was marked at Mr. Sternlicht's deposition as Plaintiff's Sternlicht Exhibit 3 for identification and ask you if that is a copy of the letter from Mr. Garrity to Courtecuisse?"

I believe that is Plaintiff's Exhibit 1. It is already in evidence.

"A Yes.

"Q Now, following the Telex that you received from Mr. Courtecuisse, did you and Mr. Sternlicht go to see Mr. Garrity?

"A We went to see Mr. Garrity.

"Q Was that on the same day that you

received the Telex or the following day?

"A I think it was the same day.

"Q You went over to Mr. Garrity's office in Stamford?

"A We called him on the telephone and we went.

"Q How long a meeting did you have with Mr. Garrity on that occasion?

"A About two hours.

"Q Was anybody else from Garrity Industries present at the meeting?

"A There were people coming that Mr. Garrity called, but I don't know about the names.

"Q But none of these people stayed for the entire meeting?

"A No.

"Q Now, I would like you to tell us to the best of your recollection, and I realize it is a few years ago, but to the best of your recollection, what was said at that meeting, and I would like you to the best of your recollection attribute to each speaker what he said.

"A Mr. Garrity said what had happened, that he had returned the flashlights from his customers and the switch wasn't working at all and didn't give any light, and I told him that we knew it was a defect which was discovered a very short time before from other sources and this defect had been discovered at the end of June and at the time when I knew it in July, I was afraid about the fact that this defect could have occurred on the flashlights shipped to Mr. Garrity, and I made an inquiry with the factory to find out whether this could occur with those flashlights, and they assured me not because the plastic used for Garrity Industries was not the same colors as the plastic used for the Luebox and giving a better resistance to that plastic material, so I was confident nothing would occur in the United States, but I found out that it was the same.

"Q Now, these reports that you received about the switch beginning in June, I believe you said --

"A End of June.

"Q -- from where did you receive these reports?

"A So far as I remember, they first came from Great Britain and Holland.

"Q Thereafter, did you receive reports from other locations in Europe about similar defects?

"A A few places in France, then we decided to take all the lamps back to our factories.

"Q All of the lamps?

"A Already sold to people through our subsidiary and to send them back.

"Q Did Societe Les Piles Wonder take back all of these lamps?

"A All these lamps.

"Q Did you take them back from various locations in Europe?

"A Yes.

"Q Do you know how many such lamps were taken back by the factory?

"A I don't know, but I think this has been given in the answers to interrogatories. I think it has been produced already.

"Q You just mentioned the answers to interrogatories. Did you participate in the answers to interrogatories?

"A Yes."

Further down on that page at Line 17 -- at

Line 12.

"Q Now, what was the defect in the switch that was causing the problems in the summer of '72?

"A It's difficult to explain. I'm not a technician, you know.

"Q I appreciate that, but in general terms?

"A It was a change in the composition of the plastic material using scrap plastic in larger quantities than requested, the scrap plastic that you are reusing, remolding again, and somebody responsible in the factory has been more than tolerated, and then the resistance of the plastic material was lower and this made the switch break."

We now proceed to Page 48, Line 14.

"Q What had to be done with the lamps to repair them?

"A Just to insert a slit of plastic beside the switch which has been done on all the lamps that had been returned from all our other subsidiaries and we sent the tooling to Wonder Corporation of America so the repair of Garrity Industries' inventory could be made here on the spot.

"Q You say this repair was made on all the flashlights returned from locations in Europe?

"A Yes.

"Q And this repair was performed at the Verderne factory?

"A At the Verdeme factory.

"Q Prior to the repair of these flashlights were tests run on them to determine whether they indeed had the defect?

"A We repaired all of them.

"Q You repaired all of them?

"A Yes.

"Q Was there a test that could be run on the flashlight to determine if the switch could break?

"A There were tests, yes, but you couldn't tell what happened. Sometime on the first time, maybe sometime on the fourth time.

"Q So you had to keep working the switch?

"A Yes, but it was better to repair all of them, but when testing one, you break it, you can't repair it any more.

"Q Once the switch is broken, you cannot repair it?

"A You cannot repair it. So we preferred to repair all of them without testing."

Turn to Page 53, line 4.

"Q In the summer of 1972 aside from turning the flashlights on and off until the switch -- in other words, all of the flashlights had to be repaired?

"A Yes.

"Q When in the summer of 1972 did the Societe Les Piles Wonder commence recalling Luebox disposable flashlights from Europe?

"A July and August."

Next page 56, line 6.

"Q In recalling Luebox in early August, 1972 did Societe Les Piles Wonder just call those Luebox that had been manufactured in May and June?

"A Yes. The others had been already sold anyway.

"Q Since they had already been sold, it would have been impossible to recall them; is that correct?

"A Yes.

"Q Now, prior to this date in early August when you recalled the flashlights, had you informed your factories and subsidiaries of the possibility that you would have to recall the flashlights?

"A Yes.

"Q When did you inform your subsidiaries of the fact that some of these flashlights might be defective?

"A In July, but the factory at the time were closed, so we could not have an explanation of the effect because the technical people were on holiday. It was only in August that we could discuss it and talk about it.

"Q So that at that time you simply informed the sales organization of the possibility?

"A Yes.

"Q Did you tell them at that time not to sell any?

"A In August, to bring them back.

"Q But at the same time did you not inform Mr. Garrity of the possibility that the Dispo might be defective?

"A Because we were assured by the factory that Dispo made for Mr. Garrity wouldn't have this defect I already told you.

"Q The first time then that Mr. Garrity

was informed by Societe Les Piles Wonder of the defective switches was at the meeting that you and Mr. Sternlicht had with Mr. Garrity in the beginning of September?

"A Yes, referred to in this letter.

"Q Now, you say that you offered to repair the defective flashlights or the ones that might have been defective; is that correct?

"A Yes.

"Q Did you at that time offer to recompense Mr. Garrity for any of these possible defective flashlights that had reached the marketplace?

"A We said at the time that we would replace the defective flashlights that his customers had been returning to him and that we would repair his inventory."

Further down on Page 58, line 15.

"Q The exhibits that we have seen here today, Bertin Exhibits 1 and 2, we have seen some invoices, I believe the last date on any of the invoices is July 3rd, 1972. Did Societe Les Piles Wonder ever ship any disposable flashlights to Mr. Garrity after July 3rd, 1972?

"A No because Mr. Garrity didn't order after the 3rd of July."

Page 60, line 4.

"Q So from July 3rd, 1972 to January 25, 1973, Mr. Garrity didn't order any further Dispo; is that correct?

"A He called for further deliveries of the Dispo.

"Q He did?

"A Yes. In October.

"Q How many did he request at that time?

"A He knew at the time that we had the bodies marked with his own trademark ready to be mounted and the quantity, if I remember -- the quantity we have in inventory was about -- I'm not sure, but this has been already answered in the answers to interrogatories.

"Q Do you recall?

"A I think one hundred sixty thousand. If I remember, one hundred sixty thousand pieces, only bodies to be mounted. We were able to manufacture the amount, one hundred sixty thousand.

"Q Would the number two hundred eleven thousand refresh your recollection? Would that be correct?

"A Maybe, but I don't remember exactly.

"Q When had these bodies --

"A It might be, yes.

"Q When had these bodies been manufactured?

"A We have not only the bodies, we also have the lamps.

"Q No.

"A No. We had lamps completely mounted and we had bodies.

"Q How many lamps did you have?

"A Two hundred eleven thousand.

"Q Two hundred eleven thousand assembled lamps?

"A Assembled lamps and the bodies we had ground up into something else.

"THE INTERPRETER: Recycled.

"THE WITNESS: Yes. So we had two hundred eleven thousand lamps.

"Q So in or about October of 1972 you had two hundred eleven thousand assembled lamps for Mr. Garrity?

"A Yes.

"Q And you had approximately one hundred sixty thousand bodies that had been molded for Mr. Garrity?

"A About, yes.

"Q And subsequently, these bodies were recycled and the plastic was used for something else?

"A Yes.

"Q When had the two hundred eleven thousand flashlights which were assembled for Mr. Garrity, when had they been manufactured?

"A They had been manufactured in June of 1972.

"Q Were these two hundred eleven thousand disposable flashlights --

"A Partly in May and June.

"Q These two hundred eleven thousand disposable flashlights, were they ever shipped to Mr. Garrity?

"A No.

"Q Mr. Garrity in October, you say he requested some. Was he requesting two hundred eleven thousand?

"A I think he requested less than that. I think it was one hundred fifty thousand he requested immediately.

"Q He requested these for immediate shipment?

"A Yes. As soon as possible, yes.

"Q Did anybody at Societe Les Piles Wonder tell Mr. Garrity that these were going to be shipped?

"A No.

"Q Now, these two hundred eleven thousand Dispo which you had stopped with Mr. Garrity's mark, whatever became of these particular disposable flashlights?

"A The marks have been --

"THROUGH THE INTERPRETER: Erased.

"THE WITNESS: Erased. The marks have been erased on them, and they are sold in our own packaging. They take them out of the Garrity packaging and sold them to a number of customers in France and Europe.

"Q So they were really sold as Luebox disposable flashlights?

"A Yes, but they were Luebox without any marks.

"Q And they were Luebox in Mr. Garrity's colors, is that correct, rather than Luebox colors?

"A Exactly.

"Q These two hundred eleven thousand Dispos on which the marks were removed and sold in Luebox containers, were they sold for the same price that Luebox was sold in Europe?

"A Yes.

"Q Did there come a time, do you know, when Mr. Garrity returned a substantial number of Dispo to Wonder Corporation of America?

"A Yes.

"Q Did Sociate Les Piles Wonder instruct Wonder Corporation of America what to do with these particular Dispo that had been returned to it?

"A To make tests to find out whether they were defective or not.

"Q This was to test the switch?

"A To check the code numbers, to test the switch at the same time.

"Q You say to check the code numbers. What do you mean by that?

"A For filing code numbers showing the date of manufacture.

"Q Each of the disposable flashlights?

"A Yes.

"Q Where in the flashlight is this code number located?

"A On the bottom of the flashlight.

"Q Does a similar code number appear on the Luebox?

"A All our products, batteries and Luebox.

"Q So that you informed Mr. Sternlicht about the code numbers for the months of May and June?

"A Yes.

"Q Did you then have Mr. Sternlicht test those particular flashlights?

"A Yes. We did.

"Q Did you instruct Mr. Sternlicht what kind of test to conduct on the Dispo?

"A The test should be made about three times with a switch screw to find out --

"Q Three times?

"A Three times.

"Q And then if the switch didn't break after the third time, it could be assumed that the flashlight was all right?

"A It could be assumed that the flashlight was all right, yes.

"Q Did you run a similar test of the two hundred eleven thousand flashlights?

"A No. We repaired them all.

"Q You repaired all of the two hundred eleven thousand?

"A Yes. The same operation at the same time. Two operations, I mean, repairing and replacing the trademark.

"Q Now, if those two hundred eleven thousand had been shipped to Mr. Garrity, would they have had to have been repaired prior to shipment?

"A They would have been repaired before.

"Q Before being shipped?

"A Yes.

"Q Did you ever inform Mr. Garrity that the flashlights you had on hand for him had to be repaired prior to shipment?

"A Yes. I'm not very sure. Yes. I think so. We could not send them immediately, that we would have to repair them before, but at that time we found out there were some more outstanding invoices."

Page 73, line 19.

"Q Now, at the time in January of 1971, the sales changed or the invoicing changed from Fudor to Garrity, did either Societe Les Piles Wonder or Garrity propose that they sign a written contract, namely, Societe Les Piles Wonder and Garrity Industries?

"A Not so early in 1971. It came out later on, but not in the beginning of '71. Mr. Garrity always wanted to work on a gentleman's agreement with us.

"Q Did you or anybody else in Piles Wonder suggest to Mr. Garrity that you enter into a written contract?

"A No.

"Q Late in 1971, did Mr. Garrity suggest that you enter into a written contract?

"A Yes.

"Q Did Mr. Garrity actually send draft contracts to you?

"A The draft contract was sent to us, the contract you have been showing me.

"Q I show you Plaintiff's Courtecuisse Exhibit 6 for identification. Do you recall actually receiving yourself drafts of contracts from Mr. Garrity?

"A We have this draft, but I don't recall exactly the date.

"Q But you do recall it being in 1971 sometime?

"A It must be at the end of 1971.

"Q Do you recall if Mr. Garrity forwarded more than one draft of the contract to you?

"A No. Mr. Garrity made only one."

MR. FOLEY: Your Honor, may I ask what relevance going into this is?

THE COURT: Somebody has to object.

MR. FOLEY: Well, I mean --

THE COURT: Then you have to object.

MR. FOLEY: We are all going to sleep reading all this kind of stuff, your Honor. It has nothing to do with the case. Sure, we admit there were writings proposed, but nobody ever signed them. So what difference does it make?

THE COURT: I don't know, counsel, but somebody has to object.

MR. FOLEY: Well, I object now, your Honor.

THE COURT: Sustained. Yes.

MR. DUNN: I believe there's only a couple more pages. We will turn to the next subject matter covered and that is Page 79, line 12.

"Q Now, getting back to the two hundred eleven thousand disposable flashlights Les Piles Wonder had in inventory for Mr. Garrity in October of 1972, and I believe aside from that there were one hundred sixty thousand bodies, earlier you testified about the manufacture of the two hundred eleven thousand flashlights. When were the one hundred sixty thousand bodies manufactured?

"A At the same time as the two hundred eleven thousand lamps in May and June, but the factories were always molding a certain number of parts in advance because the molding is not made at the same time as the mounting of the lamps. They have a certain inventory of parts ready to work.

"Q Now, I should you Plaintiff's Exhibit Sternlicht 4 for identification. It appears to be a letter from Mr. Garrity to Mr. Courtecuisse dated October 6, 1972. I ask you to read that."

For the record, that is Plaintiff's Exhibit No. 2, your Honor.

"Q In or about October of 1972, do you recall having seen the original or a copy of that letter?

"A Yes.

"Q In that letter Mr. Garrity refers to two hundred thousand first quality lamps.

"A I think there must have been --

"THROUGH THE INTERPRETER: Mixup.

"THE WITNESS: A mixup either from him, from us, but I know that the true number of lamps manufactured was really two hundred eleven thousand pieces. This I'm very sure. So far as the number of bodies, I know there were one hundred sixty thousand already made.

"Q Do you recall preparing a reply to Mr. Garrity's letter of October 6th, 1972?

"A No.

"Q I show you Plaintiff's Sternlicht Exhibit 3 for identification and ask you to read through that."

For the record, that is Plaintiff's Exhibit No. 3.

"A Yes, but we couldn't make it because of the charge --

"THROUGH THE INTERPRETER: Because of the overloading of the plant.

"THE WITNESS: Overloading of the plant.

"THROUGH THE INTERPRETER: We were not able to manufacture those items and this promise could not be kept.

"Q You are referring to the promise made in number one of the Telex of ship?

"A Apparently, this promise was made by me and the factory couldn't follow it.

"Q Do you recall preparing the text of that Telex?

"A Yes. Here is my name.

"Q Did you subsequently inform Mr. Garrity that you could not ship the one hundred thousand?

"A Yes. We informed him through Mr. Sternlicht.

"Q I show you Plaintiff's Sternlicht Exhibit 8 for identification which appears to be a letter from Mr. Garrity to Mr. Courtecuisse, dated November 17, 1972. Do you recall in or about November of '72 either having seen an original or copy of the letter?

"A I had a copy of it. Here is my name on the back of it.

"Q Do you recall having seen it?

"A Yes.

"Q In that letter, Mr. Garrity refers, I believe, to two quantities of one hundred thousand lamps each.

"A Yes.

"Q Was either order filled by Piles Wonder?

"A No.

"Q In your meeting with Mr. Garrity, you and Mr. Sternlicht early in September of 1972, did you inform Mr. Garrity that you had in stock two hundred eleven thousand disposable flashlights?

"A I didn't know the exact number at the time, but I know there were, but the number I don't know. I probably said about two hundred thousand pieces or so.

"Q But in the meeting, did you tell Mr. Garrity you had these in stock?

"A Yes, but these were lamps that had to be repaired.

"Q Did you in that meeting tell Mr. Garrity that these lamps had to be repaired?

"A Yes.

"Q So that at that time in that particular meeting, you knew that these lamps had been manufactured in May and June of '72?

"A Not at the time because I was just informed when I was here. I found out when I came back that I could make an inquiry to the factory.

"Q Did you make that inquiry when you returned to France?

"A When I returned to France.

"Q Did you know during that meeting with Mr. Garrity that these approximately two hundred thousand flashlights would have to be repaired?

"A No. I didn't.

"Q I show you a document marked as Plaintiff's Courtecuisse 23 for identification, which appears to be minutes of a meeting of September 16, 1971. I ask you to take a look at that."

MR. FOLEY: We don't have that document, your Honor.

MR. DUNN: I am going on to the last section, your Honor. That would be Page 110, line 13.

"Q In 1966 Piles Wonder decided to go into the United States and the Canadian market and you made a trip to the United States?

"A Yes.

"Q And in 1968 you commenced selling the Dispo to Garrity Industries?

"A Yes.

"Q Through Fudor?

"A Yes.

"Q And in January 1971 you commenced selling the Dispo directly to Garrity Industries?

"A Yes.

"Q And January of 1971 Piles Wonder also retained Mr. Sternlicht --

"A Yes.

"Q -- looking toward the establishment of an American subsidiary?

"A Yes.

"Q And to also perform certain market surveys for Piles Wonder?

"A Yes.

"Q Then in April of 1971, Piles Wonder agreed with Mr. DeJordan that he could be the exclusive distributor in Canada?

"A Yes.

"Q Then in September or late 1971, Mr. Garrity proposed a written contract, a draft contract?"

MR. FOLEY: I object to this again, your Honor.

THE COURT: Counsel, everything you said so far commencing at Line 13 we have heard.

MR. DUNN: All right.

"Q And in late June of '72 you discovered that certain disposable flashlights might have been defective, have a defective switch?

"A Yes.

"Q These were manufactured in May or June of '72?

"A Yes.

"Q And in early July of '72, you informed your subsidiaries and various distributors in Europe of the fact that there might be defective switches, but you did not inform Mr. Garrity and in early August, 1972 you recalled all Luebox that had been manufactured in May and June from Europe?

"A Yes.

"Q But you did not recall Mr. Garrity's, and I believe it was August, 1972, wasn't it, that Wonder Corporation of America was established?

"A No. September, 1971.

"Q September, 1971. All right. Then commencing in September of 1971, Wonder Corporation of America was selling products other than the Dispo?

"A Other than the Dispo.

"Q Then in late August or the beginning of September of 1972, Mr. Courtecuisse received

Mr. Garrity's letter complaining about switch problems?

"A Yes.

"Q And you went to see Mr. Garrity?

"A Yes.

"Q And in October of '72, Mr. Garrity ordered two hundred thousand Dispo and that order was not filled, and on January 25, 1973, Mr. Courtecuisse sent his letter to Mr. Garrity terminating the exclusive distributorship and thereafter, Piles Wonder terminated Mr. DeJordah's exclusive distributorship and all the Luebox or Endura flashlights sold in the United States are now sold through Wonder Corporation of America; is that correct?

"A Yes.

"Q And all the Endura sold in Canada are sold through Wonder Corporation of America?

"A Yes.

"Q Now, it is true, isn't it, that when Wonder Corporation of America was established that one of its purposes was to sell all of the products of Piles Wonder?

"A Yes."

MR. FOLEY: Your Honor, may I just read the next two lines?

THE COURT: Of the deposition just read by Mr. Dunn?

MR. FOLEY: Yes.

THE COURT: I can't hear you.

MR. FOLEY: For the whole story. He read here "Now, it is true, isn't it, that when Wonder Corporation of America was established that one of its purposes was to sell all of the products of Piles Wonder?

"A Yes.

"Q Including what was then characterized as a Dispo. As a matter of fact, wasn't it the intention at that time to terminate the exclusive distributorship of Mr. Garrity?

"A No. No intention at all."

THE COURT: All right.

MR. WENTZEL: Do you have anything else, Mr. Foley?

MR. FOLEY: No, sir.

THE COURT: Do you have another witness or a deposition?

MR. WENTZEL: Your Honor, at this time I would like to read portions of the deposition of Pierre Courtecuisse.

THE COURT: Well, I think we have to give the reporter a little rest. One arm just fell off. We will take a short recess.

(Court recessed at 4:00 p.m. and reconvened at 4:05 p.m.).

THE COURT: You are on another deposition, Mr. Wentzel?

MR. WENTZEL: Yes.

THE COURT: I thought you told my clerk you were only going to read two?

MR. WENTZEL: Three.

THE COURT: Did you tell him two?

MR. WENTZEL: I told him three, your Honor.

THE COURT: All right.

MR. WENTZEL: However, this one will be quite short.

THE COURT: All right.

MR. WENTZEL: This is the deposition of Pierre Courtecuisse. It was taken on April 3, 1974 at the office of Pennie & Edmonds in New York City. The questioning was done by Plaintiff's counsel, James Shaughnessy, and the defendant was represented by Mr. Keith Mullinger and Joseph Ranalli of the Pennie & Edmonds firm. Also present was Mr. Jack Bemmis, an interpreter, and I believe this deposition was taken through the interpreter.

Beginning at Page 4, line 11:

"Q Please state your full name.

"A Pierre Courtecuisse.

"Q Where do you reside?

"A 14 New St. Pierre, Oly, France 92200.

"Q Mr. Courtecuisse, do you speak English?

"A A little, slightly.

"Q Do you believe that you can answer questions such as: What is your present employment, in English?

"A I prefer having everything translated.

"Q Mr. Courtecuisse, by whom are you presently employed?

"A Piles Wonder in France.

"Q What is your present position with Piles Wonder?

"A Manager of the company and Commercial Director.

"Q How long have you had that position with Piles Wonder?

"A I have been with the company since 1959 and a member of the Board of Directors since 1969.

"Q What position did you have with Piles Wonder in 1968?

"A Commercial Director, Manager."

Page 8, line 20:

"Q When did Societe Les Piles Wonder first commence selling its products in the United States?

"A Which products?

"Q Disposable flashlights.

"A I believe it must have been in '68."

Page 39, line 10:

"Q During the period of time that Societe Les Piles Wonder was selling Luebox disposable flashlights to Garrity Industries, was Societe Les Piles Wonder marketing in other parts of the world?

"A We have sold Luebox disposable flashlights all over the world a long time before selling it in the United States.

"Q And I assume then that you continued selling Luebox in other parts of the world at the same time you were selling it to Garrity in the United States?

"A That is correct.

"Q With the exception of the trademarks

appearing on the disposable flashlight, the Luebox disposable flashlight, were the Luebox disposable flashlights that were sold to Garrity Industries different in any respect from the Luebox disposable flashlights sold in other parts of the world?

"A In the beginning, they were perhaps strictly identical, but later on there were changes in color, but these colors were not in existence for the United States.

"Q Were the Luebox disposable flashlights sold to Garrity Industries manufactured in a different factory from the Luebox disposable flashlights which Wonder sold in other parts of the world?

"A No. Everything was manufactured at the same plant.

"Q Where was that plant?

"A Verderne.

Page 49, line 2.

"Q Did there come a time in or about the summer of 1972 when Paul Garrity informed you that he was having complaints about defective switches on the Luebox?

"A Yes. We have been advised of defective switches on the Luebox from 1972, that is correct.

"Q I show you this document which was marked at Mr. Sternlicht's deposition as Plaintiff Sternlicht Exhibit 3 for identification and ask you to look at that letter."

For the record, that is Plaintiff's Exhibit 1 in evidence at this trial.

"Q Did you receive the original of that letter?

"A Certainly.

"Q Following your receipt of that letter, did you dispatch Mr. Bertin to visit Mr. Garrity to discuss the contents of that letter?

"A In '72, I don't know whether it was Mr. Bertin or Mr. Sternlicht who got in touch with Mr. Garrity.

"Q Had Societe Les Piles Wonder as of the date of that letter, August 25, 1972, received any complaints from other parts of the world other than the United States about defective switches on the Luebox?

"A That is true. We have had complaints about the switches.

"Q When did Societe Les Piles Wonder first observe such complaint on the Luebox?

"A The exact date would be impossible for me to recall, but we would have documents if it is necessary to find that and it would be somewhere around May or June. The fault with the switches came from the quality of the plastic and the color of the plastic delivered to Paul Garrity was of a different color, so we had no way of knowing whether his particular items were the defective ones, and in any case, we can only register the complaints after they have been with the client for a certain time, and he in turn has received the complaints about defective items.

"Q Will you explain for us what it was that caused the defect of the switches?

"A I am not a technician. I know that a plastic part gave, but I cannot say more. I cannot be more specific about the product."

Page 121, line 16.

"Q Getting back to the defects in the switch in the Luebox in the spring and summer of 1972, how would the flashlight break? Would it break, for example, when you turned on the switch?

"A When the switch was turned.

"Q Would it happen in all cases the first time the switch was turned?

"A It was very variable.

"Q Would it sometimes happen on, say, the tenth time that it was done?

"A Yes. It should have happened by then just as at the fifth time, just as at the fifteenth time and some didn't break.

"Q Then if you, for example, turned on one of the Luebox ones and it didn't break, you had no way of telling whether it would break on the fifth or the tenth or the fifteenth time; is that correct?

"A That is true, but when we have found the defect, we have considered the entire lot as being defective because once the switch was broken, the unit was no longer reparable."

MR. WENTZEL: That is all I have from Mr. Courtecuisse's deposition.

THE COURT: That's all you have today, I guess, too.

MR. WENTZEL: Yes, your Honor. I have asked that Mr. Coppola, who is the Traffic Manager of Garrity Industries, come up here from

Stamford and he hasn't arrived yet. I would like to put him on the stand just to verify that inventory of the twelve thousand units that are in the warehouse now that have come back from customers. I don't have him here now and I have nothing further. I would ask that perhaps we could fit him in for ten minutes or so tomorrow morning out of turn.

THE COURT: Well, can the defendants go forward if they are ready? Could you, Mr. Foley?

MR. FOLEY: You want me to go forward, your Honor?

THE COURT: I think we might save fifteen minutes anyway. If you don't want to do it, it's all right.

MR. FOLEY: We will put Mr. Bertin on the stand.

THE COURT: All right.

MR. FOLEY: Just as a background, your Honor, I would point out Mr. Bertin has been elicited in these depositions. On the other hand, I don't want to be bombed with the way it went in. I will try to shorten it.

BERNARD A. BERTIN,

called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: Bernard A. Bertin. I live at 137 Belleport in Paris, France.

MR. FOLEY: Now, I might also say, your Honor, that Mr. Bertin is fluent in English, but there are occasions when our jargon throws him a bit and with your permission, if that occurs, Mr. Sternlicht is fluent in French and he might help us out with a word or two if nobody has any objection.

THE COURT: Is that agreeable to counsel?

MR. WENTZEL: Yes, your Honor.

THE COURT: Very well.

MR. WENTZEL: You have the transcript we spoke of the other day.

MR. FOLEY: No. He speaks English.

THE COURT: Everybody try to speak slowly.

DIRECT EXAMINATION

BY MR. FOLEY:

Q Mr. Bertin, you reside in Paris; is that correct?

A Yes.

Q And you have been employed by Piles Wonder for twenty years?

A For twenty-two years.

Q And do you have the position of Export Manager?

A Yes.

Q What countries are you concerned with now as an Export Manager?

A United States, Canada, Spain, Portugal, Greece, Yugoslavia, Scandinavia, England and Austria.

Q Now, in 1968, were you also an Export Manager at that time?

A Yes.

Q And did your duties concern export in the United States?

A Yes.

Q And you are familiar with the arrangement under which Piles Wonder sold flashlights to Garrity Industries?

A Yes.

Q Now, as I understand from what we have heard, they were originally sold through an agent called Fudor; is that correct --

A Yes.

Q -- who sold them to Garrity Industries?

A (Witness nods head.)

Q Is that true?

A That is true.

Q Later sometime in 1971, the lights were sold directly to Garrity Industries?

A Yes, in January, '71 there was an arrangement between Fudor, Mr. Garrity and us.

MR. WENTZEL: Can I have that answer, please?

THE COURT: Excuse me. Are you able to speak louder or it appears you have some trouble with your voice? Would you want water?

THE WITNESS: No. No. It's all right.

(A previous answer was read back by the reporter.)

BY MR. FOLEY:

Q Do you recall when Wonder Corporation of America was formed?

A Yes. On the 29th of August, 1971.

Q And what business did Wonder Corporation do from August 1971 until the spring of '73?

A They began selling dry batteries and flashlights.

Q What kind of flashlights did they sell?

A Flashlights other than Luebox. That was reserved to Mr. Garrity.

THE COURT: In other words, you were selling regular flashlights?

THE WITNESS: Regular flashlights.

THE COURT: Not the same as Mr. Garrity was selling?

THE WITNESS: Rechargeable flashlights.

BY MR. FOLEY:

Q And so after the formation of Wonder, you continued the relationship by which you sold Dispoz-A-Lamp flashlights to Mr. Garrity?

A Yes. We did.

Q For almost two years?

A For almost two years.

Q I see. Now, generally, what is the business of Piles Wonder?

A We mainly manufacture dry batteries. We make also flashlights, portable lanterns, but dry batteries is probably eighty-five percent of our production.

Q How many employees has Piles Wonder?

A At the moment now we must be three thousand eight hundred employees, workers and employees, all kinds.

Q Is it a publicly held company?

A It is public, yes.

Q Is the stock traded on any exchange?

A Yes.

Q What exchange is that?

A In Paris.

Q Paris.

A They started in 1972.

Q And how old is the company?

A The company was founded at the beginning in 1914, very small.

Q Now, are you familiar enough with the Garrity sales to say how many flashlights you sold Garrity Industries in the period from 1968 to 1972?

A We have been selling more or less five million units.

Q Five million units. And what price did you get for a unit?

A I do remember the first price we had been making. It was about twenty-four cents, but this was a price in 1968, '69.

Q What was the price per unit in 1972?

A I don't recollect exactly. In 1972 the price was in francs, in French currency.

THE COURT: How much, eighty?

THE WITNESS: In French currency, but I don't remember exactly how much.

BY MR. FOLEY:

Q Let me show you something. I have a series of documents.

THE COURT: Did I misunderstand you? You didn't say eighty francs, did you?

THE WITNESS: No. No. I didn't. I said in French francs.

THE COURT: You didn't say eighty or eight?

THE WITNESS: No. I didn't.

THE COURT: You didn't say that?

THE WITNESS: No.

BY MR. FOLEY:

Q Look at these documents, please. It is a series and tell me if you recognize them.

A Certainly.

Q Can you tell me what they are, sir?

A The price in French currency is one franc and --

Q Excuse me. Can you tell me what these documents are?

A These are invoices.

Q And they represent what?

A Shipment of sixty-six thousand six hundred units for one twenty, one franc, twenty per unit, and then on the invoice are appearing cardboard boxes which shows the packaging, invoiced separately.

Q You are pointing to the very top one there; is that correct?

A Yes.

Q And which is Invoice No. 2357; is that correct?

A Yes.

MR. FOLEY: Can I have these marked for identification, your Honor?

THE COURT: Is there more than one invoice?

MR. FOLEY: Yes. There's about six or seven there and we will mark them in a series with the next letter, G-1. Would that be okay, your Honor?

THE COURT: Yes. G-1 through what?

MR. FOLEY: G-1 to G-10.

Now, Mr. Wentzel, I offer these in evidence.

MR. WENTZEL: I don't think I have any objection, Mr. Foley, but I would like to see them, see which ones they are.

I have no objection, your Honor.

THE COURT: G-1 to 10 received.

(Invoices received and marked Defendant's Exhibit G-1 through G-10, respectively.)

BY MR. FOLEY:

Q Now, Mr. Bertin, can you say whether the invoices identified as G-1 through G-10 were ever paid by Garrity Industries?

A No. None of those invoices were paid up to now.

Q Is there any way you can tell readily how much these invoices involve totally in French francs?

A There must be about five hundred thousand French francs.

MR. FOLEY: Well, your Honor, you might say --

THE COURT: I can't hear you.

MR. FOLEY: I have these added up on a list and they come around over six hundred sixty thousand, but I will get that accurately, your Honor.

BY MR. FOLEY:

Q Can you say what the value of the franc was compared to a dollar between March and July of 1972?

MR. WENTZEL: Objection, your Honor. Number one, I don't think this witness is competent to establish that fact.

THE COURT: He might very well. He might have had the experience of owning some francs during those periods and trading them for dollars.

MR. WENTZEL: Possibly.

THE COURT: I have no idea, but there are other ways of proving it anyway.

MR. WENTZEL: Yes. But Number 2, I am not sure what the relevance of that is. I believe this was subject to an agreement between the parties.

THE COURT: I have read the papers and it seems to me there is a claim or some problem in the way bills were paid and there were certain differences as to what the franc was worth at the time. Isn't that part of it?

MR. FOLEY: That's right. That is part of it, your Honor, but essentially, I merely sought to put on the record something in dollars that was more readily understandable than francs for everybody here, including the jury, your Honor.

THE COURT: But is that the extent of your proof with regard to the value of the franc?

MR. FOLEY: No. I can elicit it either from Mr. Bertin who is well qualified and deals in francs and dollars all the time --

THE COURT: Qualify him and let him tell us what the value is.

BY MR. FOLEY:

Q Mr. Bertin, you were Export Manager at that time; right?

A Yes.

Q Was it part of your job to translate the values of United States dollars in francs?

A Yes, and other currencies too.

Q And to pay in other currencies?

A Yes.

Q Was it part of your job to be familiar with the rate at that time?

A Yes.

THE COURT: You didn't deal in arbitrage, did you?

THE WITNESS: Yes. In view of the foreign currency when we are paid because we had to sell the foreign currency to the bank, we knew exactly, and I think in '72 the dollar value was about five francs.

BY MR. FOLEY:

Q What is it today? Do you know?

A About five, the same.

Q It is about the same?

A Yes. Between four ninety-five and five.

Q Now, we have heard here testimony of the discovery of the defective in certain lights manufactured in May and June of 1972. Do you recall that?

A Uh-Huh.

Q What happened to the lights that were repaired that were recalled from Europe?

A They were resold. They were sent back to the customers after repair.

Q They were sent out to customers?

A Yes.

Q Did you ever hear of any complaint or any comments from any customer about the repaired lights, either their appearance or the way they operated?

A No.

Q You never did?

A (Witness shakes head.)

Q Do you recall how many were repaired?

A Total repair should be, I think, about three hundred thousand or more.

THE COURT: Three hundred thousand?

THE WITNESS: Three hundred thousand.

BY MR. FOLEY:

Q Those would include the ones that were recalled overseas?

A Yes.

THE COURT: Excuse me, Mr. Foley. It is half past 4:00 and a lot of the jurors have made plans. We will adjourn now, gentlemen, until tomorrow at 10:00 o'clock, and I am told we might finish this case tomorrow. I hope so. Good night.

MR. FOLEY: Yes.

THE COURT: Good night and thanks. You may go, gentlemen.

(At this time the jury left the courtroom.)

THE COURT: Mr. Foley, do you propose to give me Requests to Charge or am I to make them up from your law memo?

MR. FOLEY: No, your Honor. I propose to give you some.

THE COURT: Oh, you have some with you?

MR. FOLEY: No. I am going to write them up tonight.

THE COURT: I had another thought about tomorrow. You just have this man from the warehouse?

MR. WENTZEL: Yes, your Honor.

THE COURT: And you have this gentleman and one other?

MR. FOLEY: I have Mr. Sternlicht and a gentleman from the warehouse too who sorted the lights that were returned to the warehouse.

THE COURT: And does your other man need an interpreter, the other witness?

MR. FOLEY: No. Mr. Courtecuisse, he won't be here. I need no interpreter.

THE COURT: You need none?

MR. FOLEY: No.

THE COURT: All right, gentlemen. 10:00 o'clock. Thank you.

(Whereupon, court adjourned at 4:32 p.m.).

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BEST COPY AVAILABLE

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PAUL C. GARRITY and
GARRITY INDUSTRIES, INC.,

Plaintiffs :

vs. : CIVIL 15,922

SOCIETE LES PILES WONDER and
WONDER CORPORATION OF AMERICA, :

Defendants :

- x

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from my original stenographic notes of the proceedings in the above-entitled cause heard on October 14, 1976, in the U.S. District Court, for the District of Connecticut, at Waterbury, before Honorable Thomas F. Murphy, Senior United States District Judge.

Carol J. Beecher
Official Court Reporter

DATED: Feb. 9, 1977

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PAUL C. GARRITY and
GARRITY INDUSTRIES, INC.,
Plaintiff

VS.

SOCIETE LES PILES WONDER and
WONDER CORPORATION OF AMERICA,
Defendant.

CIVIL ACTION NO. 15,922

OCTOBER 15, 1976

AT WATERBURY

B E F O R E:
THE HONORABLE THOMAS F. MURPHY
Senior United States District Judge

Jury Trial

CAROL J. BEECHER, C.S.R.
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10:00 A.M.

THE COURT: Do you want to put your witness on or do you want to put the defendant's --

MR. WENTZEL: I discussed that with Mr. Foley, and he suggested I go ahead and finish up.

THE COURT: With your case. Very good.

MR. WENTZEL: Mr. Coppola.

JOHN J. COPPOLA, called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Please state your full name and address for the record.

THE WITNESS: My name is John J. Coppola, C-o-p-p-o-l-a. 16 Sue Terrace, Westport, Connecticut.

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Coppola, what is your occupation?

A I am Traffic Manager for Garrity Industries.

Q And how long have you been so employed?

A For Garrity about six years.

Q And would you briefly describe your education and prior employment history?

A Well, before Garrity I was Receiving Manager for four years for women's apparel out of New York, Van Raalte.

Q And your education, sir?

A I have an Associate Degree in General Business majoring in Traffic, and I have a one year in Traffic Certificate.

Q What are your responsibilities as the Traffic Manager for Garrity Industries?

A I am to see that all shipments leave from my place to get to our consignee and any claims involved, any proof of deliveries, make sure they get there.

Q Do you have any responsibility in the area of returns from customers?

A All right. In my department I handle any returns coming back from our customers. I write up a report.

Q Directing your attention to the year 1973, did you have any responsibility for shipping returns back to Piles Wonder?

A Yes. I handled the paperwork and transportation of the product to them.

Q Now, since the last shipment was made in September, 1974, had there been any more returns from customers received by Garrity Industries?

A Yes. There was. We have 12,441 in my stock now.

Q And these are returns of defective disposable flashlights?

A That's right.

Q Now, where are they right now?

A They're upstairs in a locked storeroom.

Q And have you had occasion to count them?

A Yes. Quite often.

Q How did you go about that?

A They're physically counted before they are put in the stockroom and they are marked. We have a monthly physical inventory where every box is counted. I am in charge of that complete operation.

Q There was a physical count of each individual flashlight?

A That's right, sir.

Q And how many flashlights are in the Garrity warehouse now?

A 12,441.

Q These are all returns from Garrity customers?

A Yes, sir.

THE COURT: Since what date did you say?

THE WITNESS: September of '74.

THE COURT: Thank you.

BY MR. WENTZEL:

Q Are you familiar with the shipping charges that are paid by Garrity Industries in shipping flashlights to its customers?

A Yes.

Q And were you requested to compute an average shipping charge for a disposable flashlight?

A Yes, sir.

Q How did you go about doing that?

A Well, I took the total cost of the freight for the flashlights only and divided it by the units that were shipped.

Q And could you tell us now specifically how you went about it? What did you look at, what pieces of paper and so forth?

A Well, the regular freight bill, what the carrier sends us that we have to pay from. On the freight bill it's broken down, whether it's our other products, cigarette lighters or flashlights.

Q And the freight bill shows what information?

A I'm sorry.

Q What information is shown on the freight bill?

A Well, it shows how many cartons, what the product is, the class, the class of the product, whether there is a minimum charge or it is charged by the pound and the total amount of the bill from Garrity to our customer.

Q And how do you know what the rate is that appears on the freight bill?

A Well, the rate is set by the Interstate Commerce Commission. They set up classes for every product imaginable, and that's it. One company does not pay more than another company. One flashlight company doesn't pay more than we do or it's a standard rate.

Q I show you Plaintiff's Exhibit 14 for identification and ask you if you can identify that series of documents?

A This is the report that I made up for my supervisor giving the cost.

Q Is that Mr. Chymeryz?

A Yes, sir.

Q And is the top sheet on Exhibit 14 in your handwriting?

A Yes, sir.

Q Could you tell us what the sheets are that appear underneath the top sheet?

A Well, what I did is I took the largest carrier that we use for the first two months in '72, January and February.

Q Who was that?

A Associated Transport was our largest carrier at the time. I pulled all their freight bills for those two months, and that is what is attached, and out of these bills I only took the ones that had the flashlights on it, and that's how I got my figure.

Q And are the rates that are charged by Associated Transport the same as are charged by other common carriers?

A Yes, sir.

Q And did you consider in your experience with dealing with Garrity Shipping that that selection of two months from the largest shipper was a fair representative sample?

A Yes, sir. It was quite conservative as a matter of fact.

Q And what result did you reach for a per unit cost of shipping one flashlight?

A .025 per piece.

Q Two and one half cents?

A Yes, sir.

MR. WENTZEL: Your Honor, at this time I will offer Exhibit 14 in evidence. Would you like to see it?

MR. FOLEY: Wasn't it already in?

MR. WENTZEL: It's just for

identification.

MR. FOLEY: May I reserve objection to it?

THE COURT: Until you look at it, you mean? Yes.

MR. FOLEY: I would like to examine on it first.

THE COURT: Yes. You may.

MR. WENTZEL: You wish a voir dire? I am through. I have no further questions.

CROSS EXAMINATION

BY MR. FOLEY:

Q Mr. Coppola, the documents which were shown to you by counsel, do you know when they were made up?

A January and February of that year.

Q Of 1972?

A Yes, sir.

THE COURT: Are you talking about the Associated Transport's invoices -- I mean waybills?

THE WITNESS: Yes, sir. The freight bills.

THE COURT: But the report was made recently, wasn't it, your report?

THE WITNESS: Yes. It was, but I had to go back to --

THE COURT: When was your report made, approximately?

THE WITNESS: The date is on the top. September of this year.

THE COURT: September. Thank you.

BY MR. FOLEY:

Q That was my next question. Now, were you Traffic Manager in 1973?

A I was Receiving Manager.

Q All right, sir. The flashlight inventory that you have testified to, did any of these come back in unopened cartons?

A No.

Q They all came in individual containers which showed the light?

A Right. They came back, you know --

Q Do you know how many of the lights of the 12,000 you have testified to were of 1972 manufacture?

A No. I don't.

Q Are you familiar with the guarantee that is written on the blister package of Garrity Industries' flashlights?

A Are you asking me?

Q Yes.

A Yes.

Q Would you have any way of knowing whether any of the flashlights that you have among this inventory of 12,000 had been returned pursuant to the guarantee?

A If it was, it would be stipulated on the receiving report.

Q And you never have seen any such receiving reports?

A There's very few of them. I have seen a few, very few.

Q You have seen a few which indicated the lights were returned in accordance with that guarantee?

A Yes.

MR. FOLEY: All right. That's all I have from this gentleman, Your Honor, and I object to these documents solely because they have never been shown to us before or ever identified despite all the questions, the interrogatories and discovery sought to receive the type of documents they had to support their claims.

THE COURT: Well, I have to see something to find out what you say is true or not. You have some reference in your deposition or interrogatories or correspondence.

MR. FOLEY: I will find it, Your Honor.

THE COURT: I will reserve on it then.

MR. FOLEY: Yes.

THE COURT: Do you have more questions of this gentleman?

MR. WENTZEL: I just wanted to pick up on one point.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Coppola, Mr. Foley asked you whether you knew how many of the 12,441 flashlights now on hand were of 1972 manufacture. I believe your answer was you did not know; is that correct?

A That's correct.

Q Do you know any way to find out?

A No. I don't.

Q Are you aware of any code numbers on the units?

A There's numbers on the bottom of the lamp, but I could never find out what they meant.

THE COURT: Who did you ask?

THE WITNESS: I asked my supervisor.

THE COURT: Anybody else?

THE WITNESS: No, sir.

THE COURT: Thank you.

MR. WENTZEL: I have nothing further, Your Honor.

THE COURT: Anybody else?

MR. FOLEY: No, Your Honor.

THE COURT: I just have one with regard to the way you got this average price for the cost of the freight, and I gather that what you did, you took your largest carrier's waybills for two months, January and February of '72.

THE WITNESS: (Witness nods head)

THE COURT: And I take it those were bills for merchandise being sent all over the country?

THE WITNESS: Actually, this carrier covered the central and southern part of the United States.

THE COURT: So it would be as far west of the Mississippi or further?

THE WITNESS: About the Mississippi.

THE COURT: And all the southern states?

THE WITNESS: Excluding Florida, maybe.

THE COURT: And where were the majority of the waybills indicating where the consignee had its place of business?

THE WITNESS: They were in that area.

THE COURT: All over that area?

THE WITNESS: Right.

THE COURT: I mean some as far as New Jersey and some further?

THE WITNESS: There's Georgia right out to Ohio.

THE COURT: Did you take every one and then average it?

THE WITNESS: Yes, sir. I took every bill. If you look at the report I did, I took every bill that Associated took from us.

THE COURT: How many were there, just roughly?

THE WITNESS: Sixty something. I don't know. In those bills are bills that don't pertain to this quote I gave you.

THE COURT: The point I am trying to get to, I take it the tariff from Connecticut to New Jersey per lighter is cheaper than from Connecticut down to South Carolina?

THE WITNESS: That's right.

THE COURT: And can you recall of the sixty how many were short haul or not?

THE WITNESS: No. I would have to look at them.

THE COURT: But you are telling me that you took the average of all of the sixty?

THE WITNESS: That's right.

THE COURT: Would you tell me by looking at the exhibit what the various rates were on the various bills? Just run through them. You must have the figures on a piece of paper. Do you?

THE WITNESS: I have some right here.

MR. WENTZEL: We have the original exhibit here if you want it, Mr. Coppola. (Hands document)

THE WITNESS: If you were to take the first one --

THE COURT: Just tell me what you took and tell me what the destination was.

THE WITNESS: Okay. On the first one it was to Atlanta, Georgia. The bill number was --

THE COURT: No. That's enough. Atlanta. Yes.

THE WITNESS: All right. Pittsfield, Massachusetts. Charlotte, North Carolina. Cleveland, Ohio. Rome, New York. Grand Rapids, Michigan. Columbus, Ohio. Cleveland again.

THE COURT: You didn't tell us Cleveland before, did you or did you?

THE WITNESS: Cleveland.

THE COURT: Yes. All right.

THE WITNESS: Dayton, Ohio. Richmond, Virginia. Pittsburgh, Pennsylvania. Landover, Maryland. Washington, D.C. Columbus, Ohio. Virginia Beach, Virginia. High Point, North Carolina. Van Worth, Ohio. Pittsburgh, Pennsylvania.

Should I go on?

THE COURT: Yes. Do you mind?

THE WITNESS: No. Wilmington, North Carolina. Baltimore, Maryland. Fairfax, Virginia. Lancaster, Kentucky. Atlanta, Georgia. Youngstown, Ohio. McKeesport, Pennsylvania. Glenside, Pennsylvania. Rochester, New York. Mt. Vernon, Ohio. Williamson, West Virginia. Atlantic City, New Jersey. Landover, Maryland. Cincinnati, Ohio.

THE COURT: That's enough now. Go back to the Atlanta and tell me what the rate was on that bill. That is back about seven bills.

MR. WENTZEL: I think it was the first one, wasn't it?

THE COURT: It's also back. He mentioned it twice.

THE WITNESS: All right. Atlanta, Georgia. The bill number is 142 --

THE COURT: No. Just tell me what the rate was.

THE WITNESS: This was a minimum shipment. $10.67.

THE COURT: And did you add minimum shipments in your addition before you drew the average?

THE WITNESS: Yes, sir.

THE COURT: All right. Take the first Atlanta one, the very first one you read.

THE WITNESS: That is a minimum shipment of $10.67.

THE COURT: And that meant a carton, didn't it?

THE WITNESS: Three cartons.

THE COURT: And they were each $10.67 or the $10.67 for three?

THE WITNESS: $10.67 was for the three cartons, 75 pounds.

THE COURT: And how do you compute the price per lighter or flashlight in those three?

THE WITNESS: All right.

THE COURT: How would you do that?

THE WITNESS: There was 72 flashlights in this carton.

THE COURT: And there were three cartons?

THE WITNESS: Three cartons. So it

would be 72 times 3. 216. And if you were to divide that into the $10.67 --

THE COURT: It would be more than two and a half, wouldn't it?

THE WITNESS: It's .049.

THE COURT: Yes. Now, just pick out one at random that wasn't the minimum rate.

THE WITNESS: Rome, New York.

THE COURT: Yes. How much was that?

THE WITNESS: This is a minimum. I'm sorry. All right. Grand Rapids, Michigan. There was three cartons of lighters shipped and three cartons of flashlights in the same shipment. The three cartons of flashlights cost $5.74.

THE COURT: So that would be also two hundred some-odd?

THE WITNESS: Two hundred sixteen divided into 574.

THE COURT: And what did that come to?

THE WITNESS: .027.

THE COURT: What does the point mean, penny?

THE WITNESS: No. Decimal.

THE COURT: No. Did you say 1.024?

THE WITNESS: No. .027.

THE COURT: All right. Are there any other questions?

(No response)

THE COURT: You may step down. That is your case then, Mr. Wentzel?

MR. WENTZEL: Yes, Your Honor.

THE COURT: All right. Do you want to continue with your witness?

BERNARD A. BERTIN, having been previously duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. FOLEY: (continued)

Q Mr. Bertin, let me show you the invoices that were marked yesterday as Exhibit G 1 to 10, and I will ask you if you calculated along with me the total amount of francs that are due under those invoices?

A Yes.

Q Let me show you a piece of paper and I will ask you if these are the calculations that we went over?

A The total French francs.

Q Are those the calculations that we did?

A Yes.

Q Can you say what the total number of francs were for all the invoices represented by Exhibit G 1 to G 10?

A The total was 667,231.63.

Q And did you then calculate at the exchange rate prevailing at the time that sum in United States dollars?

A Yes.

Q And what is that, sir?

A The total is $133,446.32.

MR. FOLEY: I will mark this for

identification, Your Honor, if counsel desires.

THE COURT: Mark what, the calculations?

MR. FOLEY: The calculations, yes, sir.

THE COURT: All right.

THE CLERK: That is Defendant's Exhibit H.

THE COURT: For identification.

(Calculations marked Defendant's Exhibit H for identification.)

MR. FOLEY: I would not offer them, Your Honor.

THE COURT: You say you will offer it?

MR. FOLEY: I will not, Your Honor.

THE COURT: Will not. All right.

BY MR. FOLEY:

Q Now, I think yesterday, Mr. Bertin, we reached the point where we were discussing the time when Piles Wonder became aware of a large number of defective flashlights in 1972.

Now, when did the plant, Piles Wonder first find out whether there were defectives in the field?

A We found out in July, but the factory was closed at the time.

Q Pardon? Slowly, sir.

A We found out in July, but then the factory was closed for holidays.

Q Was the factory closed in July?

A In July, yes.

Q Now, let me ask you this: Don't you also have a vacation in August?

A No. In August we all --

Q Everybody was there in August?

A Yes, in August, and the factory was aware of what happened as soon as they reopened.

Q Did the factory know what the cause of the defects were?

A Not at the beginning. They had to find out.

Q Who had to find that out in Piles Wonder?

A They found out in the course of August and the Manager of the factory --

Q The Manager?

A Yes, and his staff, several people.

Q All right. Now, we have had testimony the last two days or yesterday that indicated that the cause resided in a defective batch of plastic; is that it?

A Yes.

Q It was a poor mix?

A Yes. A poor mix on the switch.

Q And it weakened the switch?

A Yes.

Q Now, we have also heard that you learned that

Garrity had among his inventory or those shipped to him defective flashlights with defective switches also; is that correct?

A Yes.

Q Now, looking at the Exhibit G 1 to 10, can you identify among these exhibits any shipments that would have contained defective flashlights in the Garrity inventory?

A Yes. The two shipments made in July and covered by invoices dated the 3rd of July.

Q And what is the explanation for identifying July as the batch that might have been defective?

A Because the defect occurred in the production of May and June, and there was no shipment made in May, June.

Q What was the previous shipment of lights that you see there by date?

A 24th of April.

Q Thank you, sir.

THE COURT: You identified two shipments, and are they each on July 3rd?

THE WITNESS: Yes.

THE COURT: Oh.

THE WITNESS: There are two invoices, Your Honor, but same shipment.

BY MR. FOLEY:

Q Now, I will show you Defendant's Exhibit H for identification which are the calculations that we examined, and I direct your attention to the left column, and I will ask you whether you confirmed with me the total number of lights that comprise the shipments of July 3rd, 1972?

A One shipment, 167,040 lights; then another one of 49,248.

Q Then is it true that the maximum number of lights in the Garrity inventory that could have contained defective switches was some 216,000?

A Yes.

Q Now, again referring to Exhibit G 1 to 10, can you tell me when payment was required pursuant to the terms of invoices dated March 3, 1972?

A I didn't get you. Which?

Q Let me ask you when payment must be made of invoices dated March 30, 1972 based upon the terms of payment?

THE COURT: Are you saying March 30th or March 3rd?

MR. FOLEY: March 30th.

THE WITNESS: Payment should have been made the end of July.

BY MR. FOLEY:

Q July 30?

A July 30.

Q Now, if you will examine Exhibit G 1 and G 2 which are dated March 30, can you tell me whether under the terms of the invoices they were all due for payment before you ever received notice of defects from Garrity?

A Yes. The first two invoices.

Q And can you recite just the franc amount of those two invoices?

A 125,000 francs.

Q And how much did that represent in dollars at the time?

A Yes. $25,000.

Q Now, you heard in August of 1972 that Garrity had reports of defective switches among his lights, and as I understand, you visited Mr. Garrity right about that time along with Mr. Sternlicht of Wonder Corporation; is that correct?

A Yes.

Q And did you at that time advise Mr. Garrity that you would give him credit for any defective lights that he had in his inventory?

A We did.

Q Now, did Garrity in the Fall of 1972 request newly produced lights to replace his inventory?

A Yes.

Q And did you intend in the Fall of 1972 to sell him new lights to replace his inventory, if necessary?

A Yes.

Q Now, were you also in the Fall of 1972 repairing defective lights that had been returned from Europe?

A Yes.

Q At the same time was Piles Wonder producing new lights?

A Also, yes.

Q Also. Now, can you explain why you never delivered new lights to Garrity Industries?

A There are two reasons. First, no invoice was paid. There was no payment. The second reason is that about the end of December we learned that Mr. Garrity had bought flat batteries from one of our competitors.

Q Do you know what the flat batteries were being used for?

A Yes. For probably and surely for the new disposable lighter that Mr. Garrity launched on the market about the Fall of '72.

Q Is the light that you have in mind the one that I hold in my hand (indicating)?

A That is the one.

Q Is this the light?

A This is the light.

Q This is what is called the Mark IV?

A Yes, it is.

Q Did you help Garrity Industries get the Mark IV underway by selling batteries to him?

A Yes. We did. We sold batteries twice to Mr. Garrity for the Mark IV.

Q Now, late in the Fall of 1972, did you learn that Garrity Industries was buying very large amounts of batteries from your competitor in France?

A Yes.

Q Where did you receive that information?

A From Mr. Sternlicht.

Q Was Mr. Pierre Courtecuisse consulted on this?

A Yes. He was informed of this.

Q Now, in January of 1973, Mr. Courtecuisse by letter informed Garrity Industries that it was discontinuing the sale of the Luebox to Garrity Industries; is that correct?

A Yes.

Q Were the reasons associated with Mr. Garrity's purchase of the large batteries from a competitor?

A Yes.

Q And was the other reason because Mr. Garrity did not pay his invoices?

A Yes.

Q Now, we have had some testimony suggesting that Wonder Corporation of America was organized to replace Garrity Industries in the sale of Luebox flashlights. Have you heard that testimony?

A No. I didn't.

MR. WENTZEL: Your Honor, I object to the form of this question.

THE COURT: Sustained. Yes. It doesn't make any difference whether he heard it or not, counsel.

MR. FOLEY: Well, I will put the question again.

Q Was Wonder Corporation of America organized to replace Garrity Industries in the sale of your Luebox flashlights in the United States?

A No.

MR. WENTZEL: Your Honor, I object to the question on the grounds it is grossly leading.

MR. FOLEY: It has been implied in all the depositions.

THE COURT: I will allow it.

MR. FOLEY: Did you rule on that, Your Honor? I didn't hear it.

THE COURT: I said I would allow the question and the answer.

MR. FOLEY: Have you got the question?

THE COURT: The witness said "No".

THE WITNESS: No.

MR. FOLEY: I'm sorry. I didn't hear him.

BY MR. FOLEY:

Q How long was Wonder Corporation in existence prior to the termination of the arrangement with Garrity Industries?

A When the Corporation was incorporated on the 1st of September in 1971 and the arrangement with Mr. Garrity stopped in January of '73.

Q Mr. Bertin, at the time that the relationship with Garrity Industries was terminated, do you recall how many flashlights Piles Wonder had in its inventory with the Garrity identification on it?

A We had 216,000 lamps in inventory.

Q And did Piles Wonder have in its inventory packaging with the Garrity name and identification thereon?

A We also had packaging and we also had about 160,000 pre-molded shells to make new lamps with the

Garrity identification on it.

Q Well, the pre-molded shells were merely turned back into plastic, weren't they?

A Yes.

Q What happened to the lights that were in inventory?

A They were erased. I mean the names were taken away, the Mark's. They were repaired and sold to our normal customers.

Q How were the names taken off?

A With an erasing machine.

Q An erasing machine?

A Erasing machine, yes.

Q Let me show you a document and I will ask if you recognize this. (Hands document)

A Yes.

Q Can you describe what that is?

A This is a---

Q I withdraw that.

A This is a breakdown of costs of repair and sending of the Mark's and the lamps.

Q By whom?

A Which could have been made by Wonder Corporation of America with the tooling we were sending to them.

MR. FOLEY: Let me mark this for identification.

THE CLERK: Defendant's Exhibit I for identification.

(Breakdown of costs marked Defendant's Exhibit I for identification.)

BY MR. FOLEY:

Q Now, Mr. Bertin, your signature is on this document, Defendant's Exhibit I for identification?

A Yes, sir.

Q And the document was directed to Mr. Sternlicht in the United States; correct?

A Yes.

Q Did the document indicate the cost of erasure of the Garrity name off flashlights in the United States?

A Yes.

Q What were the figures based upon, the cost?

A The cost had been incurred in France.

Q The cost of such erasure in France?

A In France.

Q The first paragraph states that "The cost for re-work . . . "

MR. WENTZEL: Your Honor, I object to his reading from this document.

THE COURT: Sustained.

BY MR. FOLEY:

Q Can you identify from this document the price per flashlight for reworking a total of 100,000 lights?

MR. WENTZEL: Your Honor, I object to the witness reading the document.

THE COURT: Sustained. Can you state it?

THE WITNESS: Yes. The cost --

BY MR. FOLEY:

Q Wait a minute. Can you state what the cost for re-working a flashlight by removing the Garrity identification was at Piles Wonder?

MR. WENTZEL: I object, Your Honor.

THE WITNESS: Ten cents.

THE COURT: I will allow that.

MR. WENTZEL: He is reading from the document.

THE COURT: I don't know whether he is reading or not.

MR. FOLEY: He is refreshing his recollection.

THE COURT: Do you need the document to refresh your recollection as to what the cost was?

THE WITNESS: The cost was ten cents.

THE COURT: No. Do you need the document to refresh your recollection as to what the cost of erasing the Garrity identification was?

THE WITNESS: No. I knew it.

THE COURT: You knew it. All right. And you say the cost was ten cents?

THE WITNESS: Ten cents.

THE COURT: Per unit?

THE WITNESS: Per unit.

THE COURT: Thank you.

BY MR. FOLBY:

Q And what was the total cost in France of erasing the Garrity identification from all the inventory that you had on hand?

A 216,000 multiplied by 10 cents.

Q All right, sir. Now, did you also have Garrity packaging on hand?

A Yes.

Q What happened to the packaging?

A We destroyed it.

Q Had you paid for having the packaging made up?

A Yes.

Q Do you recall how much that was?

A No. I don't recall it now.

Q You do not?

A Not exactly.

MR. FOLEY: That will be all, Your Honor.

THE COURT: Any cross?

MR. WENTZEL: I'm sorry.

THE COURT: Didn't you say you were finished?

MR. FOLEY: Yes.

MR. WENTZEL: I didn't hear him say he was finished, Your Honor. I'm sorry.

CROSS EXAMINATION

BY MR. WENTZEL:

Q Mr. Bertin, let me direct your attention first to the meeting that you had with Mr. Garrity in 1972 following the receipt of his complaint. Do you recall that meeting?

A (Witness nods head)

Q And at that meeting, you promised to give Mr. Garrity credit for his costs on the defective lamps; is that correct?

A Yes.

Q And you also promised to deliver some replacement units; is that correct?

A Yes.

Q And at that time did you bring to Mr. Garrity's attention that he was behind in any payments?

A We didn't talk about payment at the time.

Q What was said?

A Yes.

THE COURT: The lawyer wants to know what was said. Was anything said about payment?

THE WITNESS: We just talked about the defect on the lamps.

BY MR. WENTZEL:

Q You just talked about the defects?

A Yes.

THE COURT: Are you suggesting that a merchant needs reminding about bills owing or not?

MR. WENTZEL: No, Your Honor. I am not suggesting that.

THE COURT: I see. But anyway, the witness said that money was not discussed.

MR. WENTZEL: I will suggest something quite different later.

THE WITNESS: We didn't talk about payment because Mr. Garrity was mostly late in his payment from the beginning, so two months was something normal.

BY MR. WENTZEL:

Q So you weren't worried about that?

A Not that day.

Q When was it again that this defect was discovered by Wonder?

A The defect was discovered in July and the factory was aware of it, they could explain it in August.

Q You made a shipment to Mr. Garrity in July, did you not?

A Yes.

Q Was that shipment made before or after you discovered the defect?

A It was before.

Q Before you discovered the defect?

A Yes.

Q You are quite sure that the defect was discovered sometime after the 3rd of July?

A Absolutely.

Q Let me ask you if you recall giving the following answer to the following question at your deposition taken on August 13, 1974 in Mr. Foley's office. Do you recall being present at that deposition, sir?

A Yes.

Q This is speaking of the meeting you had with Mr. Garrity.

THE COURT: Give counsel the page.

BY MR. WENTZEL:

Q Page 45.

"Now, I would like you to tell us to the best of your recollection, I realize it is a few years ago, but to the best of your recollection what was said at that meeting, and I would like you to the best of your recollection attribute to each speaker what he said?"

"A Mr. Garrity said what had happened, that he had returns of flashlights from his customers and that the switch wasn't working at all and didn't give any light, and I told him that we knew that was a defect which was discovered a very short time before from other sources and this defect had been discovered at the end of June."

Do you recall giving that testimony?

A Yes, but I think we had been shipping to Mr. Garrity in the beginning of July and I wasn't informed at the time of the defect. I learned it about the eighth of July personally.

Q Who did know about it?

A What?

Q Who did discover it in June?

A We got returns from customers in the end of June, but the shipments were already enroute.

Q Was this brought to Mr. Courtecuisse's attention?

A I don't know.

Q In any event, nothing was done to inspect the shipment that went to Mr. Garrity, I gather; is that correct?

A Nothing at the time.

Q Later in the month of July, did you notify Mr. Garrity that you were having a problem?

A No, because we inquired in the factory whether the lamps sent to Mr. Garrity could be also defective, and we were answered "No" because the colors are different, the plastic properties could be different too.

Q I thought you said that the factory was on vacation in July?

A The defects occurred on the lamps made by us with our own trademark and sent to two or three other countries, and we were assured by the factory that the lamps made by Mr. Garrity being of the color and the mix of plastic couldn't be defective.

Q When did they give you that assurance?

A In the course of July when we knew there were defective lamps of that kind. I just wanted to know whether there could be a defect in Mr. Garrity's shipments, and they assured me "No", and I learned there were defects to Mr. Garrity's shipment only when I was in Stamford in the end of August.

Q Maybe I misunderstood your testimony on direct. I thought you had testified that the factory was on vacation in July.

A In July, yes.

Q So that you didn't learn the cause of the defect until August?

A We knew there were defects on the lamps returned from our other customers, and I wanted to know whether there could be such a defect on Mr. Garrity's shipment, and we knew -- I knew there were no defects in August. Maybe I said in July, but it was impossible because the factory was closed.

Q The factory was closed?

A Closed in July. I couldn't see any technician at the time.

Q So if the factory was closed and the factory people were on vacation, how were they able to assure you?

A No. I just knew it the first days of August when the factory opened.

Q Oh, you got this assurance in August?

A Yes.

Q So you let the whole month of July go by without telling Mr. Garrity anything?

A Yes.

Q Even though you knew he had gotten shipments very recently?

A Yes.

Q You were getting complaints, they started coming in in June and you never bothered to check to see if these affected Mr. Garrity?

A We had no means to check it.

Q "We had no need to check it"?

A No.

Q You had no need to check?

A No means to check.

THE COURT: M-e-a-n-s; is that right?

THE WITNESS: Yes.

MR. FOLEY: Your Honor, he said he was sure there were none in Mr. Garrity's shipment. There wasn't any question of letting time go by.

BY MR. WENTZEL:

Q You had no means to check with Mr. Garrity; is that what you are telling me?

A No means to check whether they would be defective or not.

Q Did you know that the defects that you were getting back were connected with the switch?

A The defects we got back from other customers we knew it was the switch, but we didn't know what kind of defect was in the switch.

Q Did it not occur to you to suggest to Mr. Garrity that he might pull out a few of the flashlights you had just shipped to him and check the shipments?

A No. We waited to know about it until August.

Q You knew he was shipping out his inventory 100,000 a month?

A No. I don't think so.

MR. FOLEY: There is nothing to lay that basis.

THE COURT: The witness didn't think so either. He just said so. Let's get on, counsel.

BY MR. WENTZEL:

Q You were aware, weren't you, Mr. Bertin, that Mr. Garrity was reselling your flashlights?

A No.

Q No?

A I don't think he was reselling the flashlights already in August because he had a large inventory before.

Q I mean you did know that he resold them to other people?

A (Witness nods head)

THE COURT: You knew that was his business?

THE WITNESS: That was his business to resell it.

BY MR. WENTZEL:

Q Now, at the time you met with Mr. Garrity in early September, 1972, did you have any replacements available to send him at that time?

A No.

Q Do you recall sending Mr. Garrity a telex on October 10, 1972? I show you Plaintiff's Exhibit 3.

A Yes.

Q And in that telex, you said that "We confirm we are going to ship 100,000 lamps newly produced on October 31."; is that correct?

A Yes.

Q Did you have any newly produced lamps at that time?

A We begin having, but we couldn't make the quantity in due time.

THE COURT: I'm sorry. I didn't hear you. "We couldn't . . . "

THE WITNESS: We could not send the quantity announced in this telex because we had been late in production.

BY MR. WENTZEL:

Q Well, at any time prior to the end of 1972, did you have any lamps to ship to Mr. Garrity?

A We had lamps to repair for Mr. Garrity and probably around November or December we could have been shipping new lamps to Mr. Garrity.

Q Well, at any time did you produce any new lamps in the Fall of 1972 with the Garrity trademark on it?

A I don't know exactly what time we produced.

Q Now, let's talk about these 216,000 lamps for a moment.

A Yes.

Q When were they made?

A 216,000? They were made in May and June. They were inventoried in the beginning of August.

Q And they were defective, weren't they?

A They could have been defective. That's all we knew. To find the defect we had to check it.

Q Didn't you consider them defective?

A They could have been defective. That's all we can say.

Q They were made right at the same time as the other lamps that had turned out to be defective; isn't that correct?

A Yes.

Q And by the end of 1972 -- strike that.

Did you propose to send those lamps to Mr. Garrity without repairing them?

A No.

Q You were going to repair them first?

A We had to repair them first.

Q Which consisted of sticking a piece of plastic and cutting a hole in it and patching it back up; right?

A Yes.

Q By the end of 1972 had you made those repairs on those units?

A No.

Q So isn't it correct, Mr. Bertin, that all the way down to the end of 1972 you didn't have anything to ship to Mr. Garrity?

A Yes.

Q On the invoice that was dated July 3, 1972, where were the flashlights covered by that invoice on that day? In other words, what I am asking you, sir, is do you issue the invoice as the flashlights leave your factory or as they arrive in LeHavre or as they get in New York, what point in time?

A No. We must issue the invoice when the goods are leaving our warehouse.

Q And they go from there to LeHavre?

A Yes, to LeHavre for shipment.

THE COURT: But the invoice goes where?

THE WITNESS: Invoices are sent to the customer, sent to Mr. Garrity.

THE COURT: By mail?

THE WITNESS: By mail.

BY MR. WENTZEL:

Q Now, how long does it take the goods to get to LeHavre?

A The goods, about a few hours.

Q Same day?

A Same day.

Q And if they leave LeHavre on the same day or the next day, do they travel by sea only from LeHavre?

A Yes, but sometimes the goods have to wait two or three days. It depends if the ship is available and if the ship is not delayed and so on.

Q Do you know how long it would normally take for those flashlights to arrive at Mr. Garrity's warehouse here in Connecticut?

A From our warehouse, it can arrive about 15 to 20 days.

Q So you wouldn't expect that the shipments that were made in July, on July 3, to arrive at Mr. Garrity's warehouse until, say, July 18th to 23rd?

A Yes.

Q The end of July, in there?

A Yes.

Q Now, are you familiar enough with Mr. Garrity's business with having worked with him over the years to know how long it takes --

MR. FOLEY: I object to that, Your Honor.

THE COURT: Yes. I think you are adding some things that you didn't mean, really. Are you familiar with Mr. Garrity's business to tell us what?

MR. WENTZEL: To tell us whether or not you know about how long it would take Mr. Garrity to distribute his inventory out to his customers?

THE WITNESS: No. I don't.

BY MR. WENTZEL:

Q Let me ask you about your own business, Wonder's business. If you received flashlights in your warehouses on about July 18th to 23rd, how long would it take before they got out to the hands of the customers?

MR. FOLEY: I object, Your Honor.

There is no indication they're applicable kind of businesses. Piles Wonder is an immense operation.

THE COURT: I would think that if you want that in the evidence, you have a man tell us about it very quickly.

BY MR. WENTZEL:

Q Prior to these invoices in 1972 that your counsel has put into evidence, Mr. Garrity paid all his prior bills, did he not?

A I didn't get your question.

THE COURT: He wants to know other than the invoices that you talked about when your lawyer was talking to you, Mr. Garrity paid all of the prior invoices, did he not?

THE WITNESS: They have been paid.

BY MR. WENTZEL:

Q And do you recall that Mr. Garrity prior to 1971 purchased flashlights through the Genouds Organization?

A Yes.

Q And was their company here in the United States called Fudor?

A Yes, Fudor, Incorporated.

Q Now, did Wonder have a dispute with Fudor over defectives at any time?

A We are not in dispute, but Fudor had defective products in their warehouse in Stamford, and when we stopped working with Genouds, we just made the credit out for the defectives they declared to us.

Q Did they withhold payment of their invoices until that matter was resolved?

A Yes.

Q In the case of Genouds, did you demand that Genouds pay its invoices before you settled the amount of the credit?

A No, because Genouds has always been paying invoices regularly. There was no outstanding invoice with Genouds at the time.

Q What did you issue a credit on then?

A The defective lamps Genouds had in inventory in Stamford.

Q And you are telling me at that time Genouds owed you no money?

A Well, there was still invoices due, but normally due and payments probably occurred after the day we issued the credit note.

Q Now, prior to 1972, was there any way for Mr. Garrity to get credit from Wonder if some of Wonder's flashlights should turn out to be defective?

A Prior to 1972?

Q Yes.

A I don't remember.

Q You don't recall?

A I don't recall.

Q How were the flashlights that were shipped in connection with the invoices that have been marked as Defendant's Exhibit G packed?

A They were packed in printer displays and each display was put in the master carton.

Q And how many flashlights were in each display?

A I think there are twelve flashlights in each display.

Q Were any of those flashlights that are the subject of those invoices individually packed in blisters?

A No.

Q Who made the decision to recall the defective flashlights from your European operations?

A Monsieur Courtecuisse.

Q Was it Mr. Courtecuisse who also directed you to meet with Mr. Garrity after the complaint was received from Mr. Garrity in August?

A Yes. He received the letter while I was here and he sent me a telex.

Q Let me show you Plaintiff's Exhibit 7. Have you ever seen that letter before?

A Yes.

Q Did you have any discussion with Mr. Courtecuisse about the subject of that letter?

A Yes.

Q Could you tell us what was said?

A We just talked about the past due accounts.

Q About Mr. Garrity?

A Yes.

Q Now, that letter says, does it not, "I think it is important that you recognize . . ." this is a letter from Mr. Courtecuisse to Mr. Garrity, is it not?

A Yes.

Q It says "I think it is important that you recognize that we cannot consider the settlement of any eventual claims you may have against our company until all past due accounts have been settled."

A Yes.

Q Now, prior to this letter, did you ever inform Mr. Garrity that he would have to pay all the invoices as they became due before you would settle with him?

A No.

Q Who made the decision to put that statement in that letter?

A Mr. Courtecuisse. He had signed the letter.

Q Now, you said that the reason that

Mr. Garrity's exclusive distributorship was ended was because there were two reasons; is that what you said?

A Yes.

Q One was that he had purchased batteries from one of your competitors?

A Yes.

Q And the other was that he hadn't paid his invoices?

A Yes.

Q Now, who made that decision?

A Mr. Courtecuisse made this decision.

Q And who was the competitor from whom Mr. Garrity had purchased batteries?

A A company called L-e-c-l-a-n-c-h-e.

Q From when was it you learned that Mr. Garrity had purchased batteries from that company?

A About the end of December.

Q And when was it that Mr. Courtecuisse made the decision to sell Wonder's products through Wonder Corporation of America?

A Later on in March, I think.

MR. FOLEY: Your Honor, that needs clarification. The Luebox flashlight? They had already sold him products.

BY MR. WENTZEL:

Q Yes. I do mean Luebox flashlights, and that is what you meant in your answer, was it not?

A (Witness nods head)

Q When was the first time you recall that subject being discussed?

THE COURT: What subject, the sale by Wonder?

BY MR. WENTZEL:

Q Yes. The sale of the flashlights by Wonder in the United States?

A Springtime in 1973. Not before.

Q Not before?

A Not before.

MR. WENTZEL: I have nothing further, Your Honor.

THE COURT: Any redirect?

MR. FOLEY: I have one question.

REDIRECT EXAMINATION

BY MR. FOLEY:

Q Mr. Bertin, at the time Mr. Courtecuisse wrote the letter in January of 1973, did the people at Wonder, Mr. Courtecuisse, you, whoever might have been involved, did the people believe that the new Mark IV flashlight of Garrity Industries was to replace the

Luebox?

A Yes.

MR. WENTZEL: Your Honor, I object to what anyone else may have believed.

THE COURT: Sustained. Yes.

MR. FOLEY: What is that, Your Honor?

THE COURT: Sustained.

MR. FOLEY: Your Honor, we certainly have a right to explain our actions.

THE COURT: Yes, but he is telling us what was in somebody else's mind. That is sometimes hard to do.

MR. FOLEY: It is in our mind, Your Honor, that we made the decision.

BY MR. FOLEY:

Q Did the people at Wonder believe that Garrity's Mark IV flashlight was to replace the Luebox in the Garrity sales?

A Yes.

MR. WENTZEL: Objection, Your Honor.

THE COURT: If you used another word. You mean there was a meeting to that effect?

THE WITNESS: Not a meeting, no.

THE COURT: How was it expressed?

THE WITNESS: Discussed several times

and we had been discussing it with Mr. Sternlicht. We got the impression that -- we were sure about the fact that the Mark IV was going to replace our lamp.

THE COURT: I will allow that.

MR. FOLEY: That's all, Your Honor.

THE COURT: You may step down unless you have more.

MR. WENTZEL: Yes, Your Honor.

RECROSS EXAMINATION

BY MR. WENTZEL:

Q When did you first hear about the Mark IV lighter?

A At the time we sold batteries to Mr. Garrity, and this was already in September. August and October we had been selling batteries to Mr. Garrity.

Q Is the Mark IV lighter what you call a pistol type grip lighter?

A No. I call it Mark IV.

Q I mean the description of the lighter, generally.

A Yes.

Q You call that a pistol grip where the front of it sticks out?

A No. I don't think it looks like a pistol.

Q Mr. Garrity asked Wonder to produce the Mark IV for him?

A Not the Mark IV, no.

Q Had he asked them to produce a flashlight that you regard as similar to the Mark IV?

A Not similar. He asked to produce a kind of pistol lamp long before. I don't remember exactly when, but when we gave him the cost investment for the tooling and so on.

Q Does Wonder have more than one type of disposable flashlight that it sells?

A We had only one type of this flashlight.

THE COURT: Aren't we getting a little bit beyond the redirect?

MR. WENTZEL: I am still asking about this Mark IV which is all the redirect was about, Your Honor.

THE COURT: Redirect related to just one subject, as I understand it, and you started to pick that up when you asked the witness about when he heard of the Mark IV for the first time. It seems to me now you are going a little bit further, but maybe not. I don't know.

BY MR. WENTZEL:

Q Mr. Bertin, you did sell the batteries for the Mark IV to Mr. Garrity, did you not?

A (Witness nods head)

THE COURT: He just said that, and he gave the months.

MR. WENTZEL: I have nothing further.

THE COURT: You may step down, sir. Thank you. Do you have another witness, please?

MR. FOLEY: Could we just take a short break, Your Honor?

THE COURT: All right. We will take a recess, gentlemen.

(Court recessed at 11:20 a.m. and reconvened at 11:30 a.m.)

RICHARD A. GERWECK, called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Will you state your full name and address for the record?

THE WITNESS: Richard A. Gerweck, G-e-r-w-e-c-k. Jonathan Road, New Canaan, Connecticut.

DIRECT EXAMINATION

BY MR. FOLEY:

Q Mr. Gerweck, what is your occupation?

A I am owner and operator of a public warehouse.

Q Where is that warehouse located?

A Norwalk, Connecticut.

Q And what generally do you do at the warehouse apart from storing things? Anything else?

A Primarily, we do hand packaging, customer distribution, and very little dead storage.

Q Now, was there an occasion in 1973 when you did work for Wonder Corporation of America?

A Yes. We worked almost one summer on a project for them.

Q Can you tell us what that project was?

A Yes. It was sorting returned flashlights to identify were they good, were they bad, and then further sort them by production code date.

Q Let me show you two documents and I will ask you if you know what these are, sir.

A Yes. These are invoices covering the sorting as well as some other packaging work. One is for July, the month ending July, '73 and the other is the month ending September, '73.

MR. FOLEY: I would like to have these marked. You can put them together if you want.

THE CLERK: Defendant's Exhibit J1 and J2 for identification.

(Two invoices marked Defendant's Exhibit J1 and J2 for identification.)

BY MR. FOLEY:

Q I show you another document and I will ask if you recognize this, Mr. Gerweck?

A Yes. This is a copy of a report submitted to Wonder Corporation which recaps the production number and the quantity for each production. This was done in Norwalk by us.

Q There are two columns here. One column is labeled PN. What does that mean, sir?

A Production number or code.

Q Where did the numbers in the column labeled PN come from?

A On the flashlight itself, imprinted into the plastic.

Q And the column in the middle, Quantity is just the number of lights?

A Yes.

Q All right. Whose handwriting is this document in?

A This is an employee of mine, Mr. Rush, and he summarized the work that was done.

Q Did Mr. Rush do this under your supervision?

A Yes.

Q And did you verify this document after he had given it to you?

A Yes.

Q And did you make the report that shows in this document to Wonder?

A Yes. This is the back-up to our invoicing.

MR. FOLEY: Thank you, sir. I would like to have that marked for identification.

THE CLERK: Defendant's Exhibit K for identification.

(Report marked Defendant's Exhibit K for identification.)

MR. FOLEY: Now, Your Honor, I offer in evidence Exhibits J1, J2 and K.

THE COURT: Show them to counsel.

MR. FOLEY: (Hands documents)

MR. WENTZEL: Your Honor, at least two of these documents appear to be invoices. I wonder if counsel could state what the purpose of offering them is?

THE COURT: I could make a guess if you wanted to ask me. You could ask counsel if you wanted to do it privately. Do you want him to say it on the record?

MR. WENTZEL: Yes.

THE COURT: Tell us on the record the purpose of these invoices.

MR. FOLEY: Just to establish that he did the work, Your Honor.

THE COURT: It has a further purpose in life, I guess, does it? What is the further purpose?

MR. FOLEY: Pardon?

THE COURT: What is the further purpose?

MR. FOLEY: That the invoices are put in solely to show that the work was done and the Defendant's Exhibit K shows the coding of the lights and the quantity.

THE COURT: Isn't the purpose of both things to show to the jury what flashlights were of a certain time and what flashlights were not?

MR. FOLEY: Yes, Your Honor, but you will not derive those from those exhibits.

THE COURT: You will not?

MR. FOLEY: No. I need one more witness.

THE COURT: That is the basis for the other witness?

MR. FOLEY: Yes, Your Honor. Absolutely.

THE COURT: Does that help you?

MR. WENTZEL: Well, as long as that is the only basis as I understand it, I have no objection to it.

THE COURT: Very well. J1 and 2 and K. Did you offer both?

MR. FOLEY: Yes, Your Honor.

THE COURT: Both received.

(Two invoices received and marked Defendant's Exhibit J1 and J2.)

(Report received and marked Defendant's Exhibit K.)

THE COURT: Are you finished with the gentleman?

MR. FOLEY: I am finished, Your Honor.

THE COURT: Any cross?

CROSS EXAMINATION

BY MR. WENTZEL:

Q Did you conduct any testing yourself, sir, of the flashlights?

A I actually did, yes.

Q What did you do?

A The sequence of testing was to first count the quantity returned, and then flick them on and off at least three times to make sure they did or did not light, and then on the basis of that the next step was to sort in the prenumbered boxes bearing a code, date and the operators and myself would look at the bottom and put it into the appropriate box.

MR. FOLEY: Your Honor, I think that this is improper cross examination. We made no point about defectives in the batch. We have given credit for all 1972 returns whether or not they were defective.

THE COURT: But I don't understand your objection to the cross examination.

MR. FOLEY: It doesn't matter, Your Honor, whether they were defective or not.

THE COURT: I still don't think that relates to any reason why the man can't cross examine as to what he did.

MR. FOLEY: He can, Your Honor.

THE COURT: Have you concluded? I'm sorry.

BY MR. WENTZEL:

Q Did you personally make some inspection to determine when the flashlights were manufactured?

A We had no access to dates of manufacture versus our sorting. Is that your question? We couldn't identify --

THE COURT: You just put it in by code number?

THE WITNESS: Yes, sir.

THE COURT: But you didn't know what the code number meant?

THE WITNESS: No.

MR. WENTZEL: No further questions.

THE COURT: You may step down, sir. Thank you. Next witness, please.

MR. FOLEY: Mr. Sternlicht.

MARK STERNLICHT, called as a witness, having been first duly sworn, testified on his oath as follows:

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: Mark Sternlicht. 269 Saw Mill Road, Stamford, Connecticut.

DIRECT EXAMINATION

BY MR. FOLEY:

Q Mr. Sternlicht, what is your occupation?

A I am the President of Wonder Corporation of America.

Q And have you been the President ever since it was organized?

A I have.

Q And were you instrumental in organizing it?

A I was.

Q What did you do before you worked for Wonder?

A I was the President of a company called Advance Technology and Systems Corporation which was a small company I sold, and prior to that I was Vice President of Saft Corporation of America, and prior to that I was the Senior Engineer for Bechtel Corporation.

Q For what corporation?

A Bechtel, B-e-c-h-t-e-l.

Q Where is that located?

A Bechtel Corporation was in New York. Saft Corporation of America was in New York. Advance Technology and Systems Corporation was in Riverside, Connecticut.

THE COURT: Bechtel is a rather large corporation, isn't it?

BY MR. FOLEY:

Q What was the business of Bechtel?

A Bechtel is probably the largest construction engineering firm in the world; chemical plants, turn-key projects all over the world.

Q Now, what is the business of Wonder?

A In the United States?

Q Yes, sir.

A Wonder Corporation of America is a marketing and a manufacturing company. We distributed products manufactured by our parent company. We also distributed products for which we are exclusive importers which are not manufactured by our parent company, and we also manufacture some products.

Q Your parent company is the defendant that has been referred to as Piles Wonder?

A Yes, sir.

Q Now, you are the Mr. Sternlicht who visited

Garrity Industries in August, the end of August, 1972 with Mr. Bertin; is that correct?

A I am.

Q And at that time, were you also informed about the defectives that Mr. Garrity had received complaints about?

A I was.

Q And do you know what Mr. Bertin said to Mr. Garrity about the defectives at the time?

A I believe Mr. Bertin informed Mr. Garrity that the problem had occurred on some products which they manufactured and which were distributed in Europe, and I believe Mr. Bertin told Mr. Garrity that we would honor our guarantee to him in terms of giving him replacements either at cost or I don't recall whether at cost or the product was specifically mentioned, and we would, in effect, stand behind our product.

Q All right. And did there come a time later in the Fall of 1972 when Piles Wonder offered to repair the defective lights in Mr. Garrity's inventory?

A Yes, sir.

Q Now, Mr. Sternlicht, let me show you what appeared to be letters and ask you if you recognize those? (Hands documents)

A Yes, sir.

Q Can you tell me what the first letter is which has been identified previously as Defendant's Exhibit 19?

A It is a letter I wrote to Mr. --

THE COURT: I'm sorry. That is a number in some deposition?

MR. FOLEY: Yes, Your Honor.

THE WITNESS: It is a letter from me to Mr. Garrity, dated November 29th in which I am trying to arrange for a meeting with Mr. Garrity in order to apprise him of the way we have found to repair or, in effect, remedy the defect in the flashlights.

BY MR. FOLEY:

Q All right. And can you tell me what the letter dated December 12, 1972 relates to? I believe that is already in evidence. It is Plaintiff's 8.

A This is the letter which confirms the conversation I had with Mr. Garrity on December the 6th in the course of which I explained to him the cause of the defects and how we can repair it, and in the same letter I informed him that I have made arrangements to make all the tooling that is necessary to make the repair available on or about December 26, 1972.

Q All right. Now, did you, in fact, make arrangements for tooling to repair the lights in the Garrity inventory?

A Yes, sir. I was in France in November of 1972 and during the time I was in France I was taken to the factory in Verderne, which is the one which manufactures all flashlights. I was shown the method by which the lights were repaired. It was explained what type of equipment and tooling would be necessary in order to perform the repair, and I was given samples of the repaired lights to show to Mr. Garrity.

Q All right, sir.

THE COURT: Before we get off that, would you give the girl those two exhibits?

MR. FOLEY: Yes, Your Honor.

THE COURT: And the one that was marked on the deposition as 19, she would mark that next in order, and then the other one the following number.

MR. FOLEY: That would be Defendant's K.

THE COURT: That is now L, I guess.

MR. FOLEY: And the other one is already in, Your Honor.

THE COURT: The other one has a number?

MR. FOLEY: Plaintiff's Exhibit 8, December 12th.

THE COURT: Yes, but it should have a number in this case. So that is our exhibit M, I guess. So one that was marked on the deposition as Exhibit 19 is now L and the other is M for identification.

(Letter dated November 29th, 1972 marked Defendant's Exhibit L for identification.)

(Letter dated December 12, 1972 marked Defendant's Exhibit M for identification.)

THE COURT: All right.

BY MR. FOLEY:

Q Now, Mr. Sternlicht, I show you what appears to be two kinds of lighters and can you describe what those are?

A Yes, sir. The transparent light is a light which we have made in order to show how the switch mechanism works in this particular model, and it can be used to better illustrate the cause of the defect, and the yellow light is the light which had actually been repaired, which shows its appearance after the repair.

Q Now, referring to the transparent light, can you indicate what exactly was the cause of the defect?

A Yes, sir. If the light is examined, you can see that the switch works through a steel spring.

If you depress the switch, you can hear the spring click (indicating). The tension which the spring exercises on a piece of plastic would make the plastic break in the lights in which the plastic mixture was not up to specifications.

The remedy which we proposed for it was to make a saw cut through the top of the flashlight, insert a small plastic wedge of the same color as the original flashlight which would rest on the bottom of the support and, in effect, reinforce it, and then the wedge and the light would be ultrasonically bonded together.

Q Now, can you tell me what the yellow light is that you see there?

A The yellow light is a light which has been repaired. It shows its only difference between that which was not repaired is the small rib-like ridge across the top of the light which, in effect, is the reinforcing wedge.

Q There is a gouge out of that at the bottom. Do you know where that came from?

A I think that must have happened when the light fell. That certainly was not part of the repair.

MR. FOLEY: I would like to offer these as Defendant's Exhibits. N will be the transparent one and O will be the yellow.

THE CLERK: Defendant's Exhibits N and O for identification.

(Transparent light marked Defendant's Exhibit N for identification.)

(Yellow light marked Defendant's Exhibit O for identification.)

MR. FOLEY: Now, I would like to offer at this time in evidence Defendant's Exhibits L, M, N and O.

THE COURT: Show them to counsel. I guess they have seen L and M.

MR. WENTZEL: I think I know what they are. Could I just ask a question or two about Exhibit O?

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. WENTZEL:

Q Mr. Sternlicht, when was the repair made on this unit?

A I believe in November. I really can't absolutely testify to that, but I believe it was repaired in November in Verdernewhile I was in France.

THE COURT: That was in --

THE WITNESS: November, 1972.

BY MR. WENTZEL:

Q This particular exhibit bears the Garrity trade name, does it not?

A Yes, sir.

MR. WENTZEL: I have no objection, Your Honor.

(Letter dated November 29th, 1972 received and marked Defendant's Exhibit L.)

(Letter dated December 12, 1972 received and marked Defendant's Exhibit M.)

(Transparent light received and marked Defendant's Exhibit N.)

(Yellow light received and marked Defendant's Exhibit O.)

MR. FOLEY: May I show these to the jury?

THE COURT: Yes. "These" meaning the flashlights?

MR. FOLEY: I mean Exhibit N --

THE COURT: N and O, yes. You may show them and if you want to read the other it might save some time.

MR. FOLEY: No. B, that has already been marked.

THE COURT: You are showing the jury N, O and B?

MR. FOLEY: Right.

THE COURT: I'm sure the jury can both look and listen.

BY MR. FOLEY:

Q All right. Now, do you recall some time in the Spring of 1973 that you participated in discussions to accord a credit to Garrity Industries for all flashlights of 1972 vintage in its inventory?

A Discussions with whom?

Q With Mr. Garrity or with counsel.

A Yes, sir.

MR. WENTZEL: Your Honor, may I approach the Bench?

THE COURT: I wonder, can you just suspend everything until we have a recess? I will excuse the jury now if this is getting into a subject that might need some discussion. Why don't I excuse the jury for lunch. It's almost time.

Gentlemen, you may have lunch now and if you will be back at 1 o'clock, we will all be here, hopefully.

(The jury left the courtroom at 11:55 a.m.)

THE COURT: All right, Mr. Wentzel.

MR. WENTZEL: Your Honor, there was a discussion or two and a series of correspondence back and forth between counsel, and I know there was a meeting or two where the principals were present and represented by counsel. Now, my understanding of both the meetings and the correspondence, and I know the correspondence specifically says so, was that those were essentially settlement conferences and without prejudice and so forth, all rights reserved, whatever the traditional kind of thing that generally does not get put before a jury. Now, there may be some specific item or something that I don't have objection to, but I just don't know where we are going.

THE COURT: Is that word going to be mentioned at all?

MR. FOLEY: No. I am merely establishing that we consummated an arrangement to take back all the lights and to give him credit of 41 cents per light, Your Honor.

THE COURT: That is all?

MR. WENTZEL: I think we have already agreed to that.

THE COURT: Can you stipulate that in?

MR. FOLEY: Sure.

THE COURT: Would you be agreeable?

MR. WENTZEL: Yes. There were other issues. Obviously, we were claiming damages and so forth.

THE COURT: But all he wanted to establish was that this was the conversation that led to their promise to give him the credit for all of the flashlights that were returned.

MR. FOLEY: Exactly, and as part of that arrangement we were obliged and we did obliterate all the flashlight identifications from the inventory. We had to do that too. That was part of the deal, and we did it.

MR. WENTZEL: There we get into some of the issues that have been taken out of the case because that is what led to this lawsuit. We felt there was a failure to carry out that part of the agreement when we discovered some of those flashlights were on sale around the country in displays bearing the Garrity name.

MR. FOLEY: No. Never. That never happened. None were ever around with the Garrity identification on the flashlights. There never was such a thing.

MR. WENTZEL: They were sold in Garrity displays.

MR. FOLEY: That is different. That is out of the case.

THE COURT: The claim is out of the case?

MR. WENTZEL: I don't see where there should be any mention of it one way or the other.

THE COURT: The principal objection was the fear that you had that the word "settlement" might be mentioned or slipped in.

MR. WENTZEL: Well, I mean there were a lot of discussions on both sides. I didn't know where Mr. Foley was going once he got into the discussions.

THE COURT: He said he wasn't intending and is not now intending to discuss that. Right?

MR. FOLEY: No. If they reserved rights, Your Honor, so did we.

MR. WENTZEL: Sure. Both sides did. No question.

THE COURT: One o'clock, gentlemen?

MR. FOLEY: Yes.

MR. WENTZEL: Fine.

THE COURT: Can I ask your prognosis?

MR. FOLEY: I haven't got much more for Mr. Sternlicht.

THE COURT: No. Just give me hours or do you have another witness or two?

MR. FOLEY: No. I think another few more questions and I believe I will be finished with Mr. Sternlicht, and then I would like just to examine the Garrity transcript again to see if there is something that I might put in there. That's all.

THE COURT: The Garrity transcript of a deposition or the hearing here?

MR. FOLEY: Deposition.

THE COURT: And you might have rebuttal?

MR. WENTZEL: I think I will probably have Mr. Garrity, but it would be very short, Your Honor.

THE COURT: Let's play it by ear, I guess. Thank you.

(Court recessed at 12 noon and reconvened at 1 P.M.)

(At this time the jury entered the courtroom.)

MR. FOLEY: Your Honor, I would like to state for the record that Defendant's Exhibit M that was marked is the same as Plaintiff's Exhibit 8 that had been previously marked. And I would like to have one other statement, please.

During Mr. Bertin's testimony this morning, it was elicited that the total sum of flashlights that had been delivered to Garrity Industries and of which the defects might have been resided were a figure of some $216,000. I want to state that that was erroneous. In conferring at lunch time, we refigured that and I discussed it with counsel, and he has agreed that I can state that Mr. Bertin would correct his testimony to say that the total number was 108,000 lights.

THE COURT: 108,000?

MR. FOLEY: Right, Your Honor. That was the batch delivered in July.

MR. WENTZEL: Your Honor, I would certainly stipulate that the July deliveries were only 108,000. Mr. Bertin would correct his testimony to that effect if so asked, but I certainly do not stipulate that those are the only defective lamps that were delivered.

MR. FOLEY: I understand.

THE COURT: That is agreeable then?

MR. FOLEY: Yes, Your Honor.

THE COURT: Well, that also changes then the cost of erasure, does it? There was some testimony that the cost of erasure was 10 cents, and he multiplied 10 cents by that $216,000 figure.

MR. FOLEY: It does not, Your Honor. The cost of erasure was for those in France. We have not charged for any cost for erasure for ones returned here in the United States.

THE COURT: I made the 108,000 at the wrong place. I'm sorry. He said it was 216,288, I guess, and that should correctly be 108,000?

MR. FOLEY: That's right.

THE COURT: Thank you.

BY MR. FOLEY:

Q Mr. Bertin, let me show you a copy of a --

THE COURT: This man's name is different.

BY MR. FOLEY:

Q Mr. Sternlicht, let me show you a copy of a letter here dated February 14th and I will ask if you remember addressing that letter or writing that letter?

A The letter is dated February 21st.

Q February 21st?

A Yes, sir. I do.

Q And would you look at the last paragraph of that letter and will you tell us who it was addressed to first and read paragraph 4 of that letter.

A The letter was from me addressed to Mr. Paul Garrity to confirm discussions we had held at the Harvard Club on February the 14th. Paragraph 4 reads as follows: --

MR. WENTZEL: Your Honor --

THE COURT: You have to introduce it in evidence.

MR. FOLEY: Let me mark this.

THE COURT: Is it February 21, '72 or 3 or 4?

THE WITNESS: '73.

THE COURT: '73.

MR. WENTZEL: Your Honor, unfortunately, this gets into the area we were discussion before lunch and this, as I recall, was---

THE COURT: Counsel, we all know what the problem is and you take your chances. If it happens, certain other things happen.

MR. FOLEY: Yes. Let's mark it for identification to protect them and then we will see.

THE CLERK: Defendant's Exhibit P for identification.

(Letter dated February 21, 1973 marked Defendant's Exhibit P for identification.)

BY MR. FOLEY:

Q Now, I will ask you, Mr. Sternlicht, in the early part of 1973, did you offer Piles Wonder to sell Luebox lights to Garrity Industries?

A Yes, sir.

Q Is that reflected in the letter dated February 21 which is Defendant's Exhibit P for identification?

A It is.

Q What paragraph?

A Paragraph 4.

MR. FOLEY: Thank you, sir. I would offer it in evidence, Your Honor.

MR. WENTZEL: I object to it, Your Honor, for the reasons we discussed before the luncheon recess.

THE COURT: You are offering the whole letter or just that paragraph?

MR. FOLEY: Just that paragraph.

THE COURT: Just that paragraph.

MR. WENTZEL: I might say, Your Honor, the letter was the subject of a response by counsel, which I have.

THE COURT: Well, I am going to sustain the objection now. I don't want to excuse the jury right away, but can you go to something else?

MR. FOLEY: Yes, Your Honor.

Q Mr. Sternlicht, let me show you another document and I will ask if you know what this is?

A Yes, sir.

Q What is it, sir?

A This is a document which was submitted to Wonder Corporation of America in support of an invoice from Germac for the testing and the sorting of flashlights returned from Garrity Industries.

Q Do you see your handwriting on that document anyplace?

A I do.

Q What handwriting is yours?

A The green ink on the extreme right hand column.

MR. FOLEY: Would you mark this for identification?

THE CLERK: Defendant's Exhibit Q for identification.

(Invoice marked Defendant's Exhibit Q for identification.)

BY MR. FOLEY:

Q Now, Mr. Sternlicht, I show you what has been previously marked Defendant's Exhibit K in evidence and I will ask if you first observed a document in which there is no writing in the farthest right hand column when it came to you?

A It did.

Q Did that document come from Germac?

A It did.

Q Did you apply the numbers in Defendant's Exhibit Q in the right hand column?

A I did.

Q And what did the numbers in the right hand column represent?

A They represent the years during which the flashlights were manufactured relating the years to the code which appeared on the flashlight.

Q Now, let me use one of these. Can you explain to the jury looking at Defendant's Exhibit B how the codes tell the year of manufacture of the light?

A Yes, sir. The code is a four digit number.

The first, the third and the fourth digit put side by side give the day of manufacture. The second and the fourth digit added together --

THE COURT: Just a minute. The first, third and fourth give the day?

THE WITNESS: The day.

THE COURT: Yes.

THE WITNESS: The second and the fourth digit added together give the last digit of the manufacture year.

THE COURT: Yes.

THE WITNESS: For example, in this flashlight the code is 0032, which would mean that the light was made on the third working day of 1972.

BY MR. FOLEY:

Q And in Defendant's --

THE COURT: Excuse me. Would you do it again for me? The first, third and fourth numbers --

THE WITNESS: Added together -- not added together, put side by side. In other words, just made into one number.

THE COURT: Well, that would be 134, you mean?

THE WITNESS: In this case, it would

be 003.

THE COURT: And if it was preceded by two one's, it would be 5?

THE WITNESS: That's correct.

BY MR. FOLEY:

Q Now, the first item on Defendant's Exhibit Q for identification shows in the left column 0032; is that correct, sir?

A That is correct.

Q And did you apply the extension in the right column?

A I did.

Q And did you indicate that that was of 1972 manufacture?

A I did.

Q Now, will you look down the column there? For instance, number three is 0297. Can you tell the Court and jury how you derived the extension for that code number?

A Yes, sir. Well, I was only really interested in the year which is obtained by adding the second and the fourth digit. In the code number 0297, the two digits which are added are 2 and 7. The sum of those is 9. The year of manufacture is 1969.

Q Now, do you recall how many among the

returns of Garrity lights to Germac were not of 1972 manufacture?

MR. WENTZEL: Your Honor, I object. I don't believe it has any relevance whether it was made in 1972 or not. I think Garrity Industries is entitled to return back defectives whenever they were made.

THE COURT: No. It has some relevancy, counsel. You are overruled. Yes.

BY MR. FOLEY:

Q From your memory, can you do that?

A I believe the total number was approximately 40,000 flashlights.

MR. FOLEY: Now, I offer Defendant's Exhibit Q in evidence.

THE COURT: What did the total 40,000 represent?

THE WITNESS: 40,000, Your Honor, was the number of lights which were returned to us and which were manufactured prior to 1972.

THE COURT: Thank you.

MR. FOLEY: Subject to check, Your Honor.

MR. WENTZEL: Your Honor, may I just inquire about this document because I don't understand?

THE COURT: What is this, Q you are talking about?

MR. WENTZEL: Yes.

VOIR DIRE EXAMINATION

BY MR. WENTZEL:

Q Mr. Sternlicht, is this column headed "Quantity"?

A Yes.

Q Does that mean that you had 1665 flashlights that had the number 0032 on it?

A That is correct.

Q And what is this on the second page, the word "unknown" appears. What does that mean?

A Apparently, there were no codes or they could not read the code on the flashlight.

Q You have 1,572?

A The code was either illegible or they could not read it or there was no code. I really don't know. I did not include that number in the 40,000.

Q Now, does that 40,000 appear anywhere on this document?

A No, sir. It does not. But it can be obtained by adding the numbers for the flashlights which are not 1972.

Q And have you done that addition?

A I have not. I believe I have done it in a letter which was written at the time both parties sought to make an arrangement in returning the flashlights to us. I believe it was written in a letter addressed by Mr. Flaherty to Mr. Kelly.

THE COURT: Is there any difficulty in adding it now?

MR. FOLEY: No, Your Honor. We could add it very quickly, I think, and at least just for this exhibit we can verify the number. Do you want me to do that after I finish up this testimony?

THE COURT: Is it very difficult to add it?

MR. FOLEY: No.

THE COURT: Here is a man that is an Engineer or Computer Man. Let him do it.

MR. FOLEY: (Hands document to witness.)

THE WITNESS: The total number on this document is 31,353 lights.

BY MR. FOLEY:

Q Now, were there any other returns that were inspected by you or anyone else?

A Yes, sir.

Q Where you might have derived additional lights that were not of 1972 vintage?

A Yes, sir.

Q What was that?

A There were additional returns which were returned not to Germac, but to the Wonder warehouse, to Wonder Corporation's warehouse, and those were also visually examined for the code, date, and then a determination was made as to the year of manufacture.

Q Did you make a count of those?

A Yes, sir.

Q Did you keep records of that count?

A We did.

MR. FOLEY: I don't have them at this moment, Your Honor. Now, I offer that.

THE COURT: Before you finish that, that figure 31,000, what should I compare it with? What were the total amounts recorded in the report, K, I guess it was?

THE WITNESS: On this 59,882, Your Honor.

THE COURT: 59,832?

THE WITNESS: 59,882.

THE COURT: Thank you.

MR. FOLEY: Now, I offer that exhibit, Your Honor. I don't remember whether I did or not.

THE COURT: You did offer it. Counsel

had some questions on voir dire.

MR. WENTZEL: I have the same objection I had to the substantive question, Your Honor, which you overruled.

THE COURT: I will receive it.

THE CLERK: Plaintiff's Exhibit Q as a full exhibit.

(Invoice received and marked Defendant's Exhibit Q.)

BY MR. FOLEY:

Q Now, Mr. Sternlicht, in early 1973, January, 1973, what products did Wonder Corporation of America sell?

A In January of 1973, we were marketing two disposable flashlights.

Q Do they have names?

A Yes, sir. Their names were Rally, Smart.

Q Rally and Smart?

A Yes, sir.

Q What else were you marketing?

A We were marketing a safety arm light to be used for bicycles, and I don't remember the specific instance, but I think we were beginning to market our bicycle headlight.

We were also marketing batteries and

non-disposable flashlights utilizing the flat battery which is used in the disposable flashlight.

Q Now, in January of 1973, did Wonder Corporation have any intention to market what has been called the Luebox flashlight in the United States?

A No, sir.

Q Did there come a time when Wonder Corporation of America did put on sale a Luebox flashlight such as the blue one, Defendant's Exhibit B that you see there?

A Yes. There did come a time.

Q When was that, if you recall?

A Approximately May of 1973.

Q Now, what prompted the decision to market a Luebox flashlight in the United States?

A The decision was prompted by some very damaging publicity which was being generated by Garrity Industries to the effect that the flashlight and by inference all of our products were obsolete.

Q Let me show you a publication. This is the United States Tobacco Journal for March 15, 1973, and I will direct your attention to page 42 thereof. I will ask you if you recognize the ad on that page?

A I do.

Q Is that part of the publicity that you were referring to?

A This is exactly the type of publicity. There was also similar publicity being expressed verbally in the trade.

MR. FOLEY: All right. I offer this in evidence. First I will mark it for identification.

THE CLERK: Defendant's Exhibit R, for identification.

(Advertisement dated March, 1973 marked Defendant's Exhibit R for identification.)

MR. FOLEY: I offer it in evidence, Your Honor.

THE COURT: Show it to counsel.

MR. WENTZEL: Your Honor, I agree this is an ad placed by Garrity in March, 1973. So if that is the purpose for which it is offered, I have no objection.

THE COURT: Received.

(Advertisement dated March, 1973 received and marked Defendant's Exhibit R.)

MR. FOLEY: May I show this to the jury, Your Honor?

THE COURT: Yes.

MR. FOLEY: (Hands document to the jury.)

BY MR. FOLEY:

Q Now, Mr. Sternlicht, I show you a copy of a letter dated January 11, 1973, and I will ask if you wrote such a letter?

A I did.

Q Can you tell me what the purpose of this letter was?

A The purpose of this letter was to advise Garrity Industries of a discrepancy in the exchange rate which was used in settling a payment, payment of an invoice to Wonder, France. I was instructed to write this letter by Wonder, France and the difference occurred in Garrity Industries paying in dollars for an invoice which was issued in French francs.

Q Now, was the subject matter of this letter something other than defective flashlights situation, the previous transaction?

A Yes, sir.

MR. FOLEY: May I mark this?

THE CLERK: Defendant's Exhibit S, for identification.

(Letter dated January 11, 1973 marked Defendant's Exhibit S for identification.)

MR. FOLEY: I offer it in evidence, Your Honor.

MR. WENTZEL: No objection.

THE COURT: S received.

(Letter dated January 11, 1973 received and marked Defendant's Exhibit S.)

MR. FOLEY: May I just read this, Your Honor?

THE COURT: Yes, sir. It is addressed to Mr. Garrity?

MR. FOLEY: Pardon?

THE COURT: He didn't tell us to whom it was addressed. Is it Mr. Garrity?

MR. FOLEY: Mr. Paul Garrity, yes. Mr. Paul Garrity, President, Garrity Industries.

"Dear Paul: We have been notified by France recently of a discrepancy in the exchange rate which was used in paying the invoices 2113, 2114, 2142, 2143, 2144, 2163 and 2255. These invoices total 96,427.32 French francs, were paid using the rate of $1 equalling . . . "

THE COURT: $1 what?

MR. FOLEY: " . . . $1 equalling 5 French francs. The actual exchange rate which we can convert these to U.S. dollars is $1 equalling 5.75 French francs. Therefore, there is still an outstanding balance of 12,553.92

French francs or $2,510.78 on the above invoices. We would appreciate your attention to this discrepancy and to avoid future misunderstanding, please instruct your bank to pay Wonder France. Regards."

That's all I have there, Your Honor.

MR. WENTZEL: I'm sorry. Are you finished?

MR. FOLEY: Yes.

CROSS EXAMINATION

BY MR. WENTZEL:

Q Mr. Sternlicht, did you ever inform Mr. Garrity of how you decipher this code on the bottom of the flashlights?

A I don't recall Mr. Garrity ever asking me.

THE COURT: Are you talking about Mr. Garrity?

MR. WENTZEL: Yes.

THE COURT: He said he never asked him. All right.

BY MR. WENTZEL:

Q Anyone else at Garrity Industries?

A I don't recall anyone else asking.

THE COURT: Have you ever explained it to any of your customers?

THE WITNESS: We have on occasion explained it to some of our customers.

MR. WENTZEL: Can I have these marked for identification, please?

THE COURT: Those are not the other ones that were marked? These are two different ones, are they?

MR. WENTZEL: Yes, sir.

THE COURT: And were you showing those that you had in your hand to the witness?

MR. WENTZEL: I haven't yet. I was about to, Your Honor.

THE COURT: You showed something to the witness. Were you showing N and O?

MR. WENTZEL: I was holding them in my hand.

THE COURT: Holding what you are now marking?

MR. WENTZEL: Yes, which is marked as Plaintiff's 16 and 17.

THE CLERK: For identification, Your Honor.

THE COURT: All right.

(Two flashlights marked Plaintiff's Exhibit 16 and 17, respectively, for identification.)

BY MR. WENTZEL:

Q I wonder, Mr. Sternlicht, would you tell me when those two flashlights were made?

THE COURT: Which one are you looking at now?

THE WITNESS: The yellow light.

THE COURT: It has a number on it? No. Excuse me. It has a number on the side and the girl just put it on.

THE WITNESS: 17. The yellow one bears a code marking 2774 which would indicate that they were made in 1973. And the other one has a code number 0161, which would indicate the light was made in 1972.

MR. FOLEY: Your Honor, I think there is a correction.

THE COURT: I'm sorry.

MR. FOLEY: I think we mis-read that first one, if we heard it right.

BY MR. WENTZEL:

Q Now, could you explain how you got to the dates?

A The second and the fourth digit when added together give the last digit of the manufactured year. 7 and 4 is 11.

Q Yes.

A That is 1971.

Q Okay.

A And in this one, the code number is 0161. Adding the 1 and the 1 which is the second and the fourth digit gives 2. That is 1972.

Q Would you try the switches on those two flashlights?

A Yes, sir.

Q Are they operative?

A They are inoperative.

Q And have you had occasion to try the switches on the flashlights made in 1972 which contained the switch defect?

A I had occasion to try the switches on the lights which were returned to us by Mr. Garrity. I don't know if they were 1972 or not. I assume they were, but I did not specifically relate the switch to a year.

Q Were the ones that you tried that were returned to you by Mr. Garrity also inoperative?

A There were some which were inoperative. There were some which were operative.

Q And did the switches feel any different in the ones that Mr. Garrity returned to you than Exhibit 16 and 17?

A There was one additional defect. In this case, the switch is inoperative, but it's hard to move. There were some in which the switch was inoperative and very easy to move, but the switches were inoperative.

Q I believe you identified Exhibit 16 as having been made in 1972.

THE COURT: That is just two minutes ago you mean?

MR. WENTZEL: Yes.

THE COURT: Yes.

THE WITNESS: Yes. I did.

BY MR. WENTZEL:

Q Can you tell what day that was made?

A This would be made on the 16th working day of 1972.

Q And that would be in January, 1972?

A Yes, sir.

Q Now, the letter which was just introduced by Mr. Foley -- I will withdraw that.

When you met with Mr. Garrity and Mr. Bertin in late August or early September of 1972, did you know at that time what the cause of the defect was?

A No.

Q At that time did Mr. Bertin indicate whether or not he knew?

A I don't believe Mr. Bertin indicated he knew the cause.

Q Did Mr. Bertin tell Mr. Garrity that Wonder France did not think that the shipments made to Garrity would have the defect in them?

THE COURT: I don't think you asked that of Mr. Bertin, and if you didn't, it's improper now. Did you ask Mr. Bertin?

MR. WENTZEL: I'm sorry, Your Honor.

THE COURT: That is my ruling, counsel. You can answer it or not, but it's up to you. It is improper unless you asked Mr. Bertin that question.

THE WITNESS: I really don't recall if Mr. Bertin did tell at that time to Mr. Garrity that they did not think his lights were defective.

BY MR. WENTZEL:

Q Now, that was the meeting at which Mr. Garrity was assured that Wonder would stand behind his product and replace the defectives and so forth?

A Yes.

Q What was done to follow up on that promise?

A I went to France.

Q When?

A In November. Well, you know, it took us time, it took Wonder France time to isolate the problem, locate it and find a remedy. As I testified earlier, the remedy consisted of inserting a plastic wedge, the plastic piece had to be molded. A mold had to be made to produce the piece. Tooling had to be made. It was an ultrasonic welding head which had to be produced. So that while it may appear that between August and November an awful lot of time passed by, it really was the earliest time that Wonder had assurance that the repair which they proposed to remedy the defect would solve the problem. So when I went to France in November of 1972, I was shown what is being done to the lights to repair them, and it is that remedy which we proposed to Mr. Garrity in my meeting of, I believe, December 6th.

Q Yes. But prior to that meeting of December 6th, had you proposed to Mr. Garrity that Wonder would repair the defectives?

A Had I proposed to Mr. Garrity?

Q Or anyone else from your organization?

A I don't know, counsel. I really don't know. I think that there is some correspondence which states that I have been told by France that they are repairing the flashlights and that I attempted to communicate this to Mr. Garrity, but I don't know if it was done prior to my going to France or after I returned. I really don't recall.

Q In the meeting in late August or early September, weren't you telling Mr. Garrity that you would replace his defective flashlights rather than repair them?

A I believe Mr. Bertin stated that we would be in a position to send him replacements, yes, sir.

Q What was done to follow up on that promise?

A As far as I know?

Q Yes.

A I think the only thing that was done is Wonder France realized that it would be inappropriate to send the lights back without repairing them, and I think that was really the stumbling block. I believe that Wonder France had an inventory on hand which they were not really 100 percent sure about the defect not being possibly present, and I think that is the only thing that was done. I think that the lights which were finally offered to Mr. Garrity were repaired in France.

Q At your meeting over in France or your visit to France, I should say, in November, 1972, did you discuss the subject of Wonder Corporation of America selling the Luebox flashlight?

A No, sir.

Q Did you discuss the subject of -- well, strike that.

Do you recall giving a deposition in this case --

A I do.

Q -- at Mr. Foley's office on March 21, 1974, sir?

A I do.

Q Let me ask you whether you recall giving the following answer to the following question:

"Q Now, these several discussions that you have just been telling us about, can you tell us in terms of month and year when the first of those discussions that you had with somebody at Wonder France took place?"

"A Probably November. Probably the first time -- well, certainly some of the topics we were discussing as the subject matter occurred, but if you are relating to the discussions which led to our decision to answer the disposable flashlight market under our own name, I would say that the first time this was mentioned to the best of my recollection would be during my visit in November."

A That is correct, but that does not mean we were going to enter the market with a Luebox type disposable flashlight.

Q Were you discussing in that November meeting another kind of disposable flashlight?

A Yes, sir.

Q What was that?

A Rally, Smart and Lazer.

Q And are those all produced by Wonder France?

A Yes, sir.

Q Could you tell us what the differences are between them, if any?

A They're different in design. They're different in shape. They are not different in function. They both produce light when you press the switch.

Q Why are there three different flashlights made by Wonder France?

A Well, because Luebox type was the first flashlight, disposable flashlight Wonder ever made. It started its first, oh, I believe production in early 1968, and it is normal for a manufacturer to develop additional products. Of the three types which I described, one was a very small light. In other words, it was different in not only styling, but actually in size.

Smart was a small light using two cylindrical batteries.

The other two use a flat four and a half volt battery, same type as used in the Luebox type flashlight.

Q Were they sold at different prices at retail?

A The Rally was scheduled to be selling at the same prevailing price as the other disposable flashlight. I believe $1.89 suggested retail. The Lazer was scheduled to be sold slightly below that.

Q And what was the Garrity disposalamp selling at retail at that time?

A I believe at that time $1.89. So were all of the other disposables on the market.

Q Did Wonder Corporation of America make any effort to determine whether any of the flashlights returned by Garrity Industries were operative?

A Yes, sir.

Q And did you find some that were operative?

A Yes, sir.

Q What kind of a test did you do?

A A test which was testified to by Mr. Gerweck. They were turned on and off at least three times.

Q Three times?

A Yes, sir.

Q And of those that you found would turn on and off three times, what did you do with them?

A We removed -- we hired a company and instructed them to remove the Garrity markings from the light and from the displays.

Q What was Wonder's policy with regard to giving credit for defects prior to 1972?

A Wonder France or Wonder U.S.?

Q Wonder France, if you know, sir.

A I don't know. I was not involved. My company only began its existence in 1971, in August of 1971.

Q All right.

A And Mr. Garrity never bought his products through Wonder Corporation of America. He always was dealing directly with Wonder France.

Q So you don't know of any policy whatever?

A I really don't know what the policy was. No.

MR. WENTZEL: I have nothing further, Your Honor.

THE COURT: Any redirect?

MR. FOLEY: Your Honor, I would just like to ask one question.

REDIRECT EXAMINATION

BY MR. FOLEY:

Q Mr. Sternlicht, in a meeting of November, 1972 that was referred to where there was some consideration of new products, I think you identified the products as Smart and Rally. Were any of those products ever offered to Mr. Garrity?

A I think the Smart was offered to Mr. Garrity.

Q And did he reject it as far as you know?

A Right.

MR. FOLEY: Now, that is all I have, Your Honor, from Mr. Sternlicht.

THE COURT: All right. You may be excused.

MR. FOLEY: I have one little problem about the purpose of the offer of these lights. I don't understand where they came from or what they are supposed to demonstrate, and I would like to know that, Your Honor.

THE COURT: I suppose if we will wait, we might find out. Do you have any more witnesses or exhibits?

MR. FOLEY: No, Your Honor.

THE COURT: That is your case?

MR. FOLEY: That is my case.

THE COURT: You said you might have rebuttal.

MR. WENTZEL: Yes, Your Honor. I would like to call Mr. Garrity.

THE COURT: Shall we take a recess first or will he be long?

MR. WENTZEL: Well, I don't think he will be too long.

THE COURT: Well, we better take a recess then. You go ahead, gentlemen.

(At this time the jury left the courtroom.)

THE COURT: I have reserved when the last witness was on the stand with regard to Defendant's Exhibit P, a letter of February 21st by the witness to Mr. Garrity with regard to the meeting at the Harvard Club, and what disturbs me is the next to the last line, paragraph 4 which reads: "Such stock is hereby offered to you subject to the settlement of the outstanding account." And I would venture to guess that that might be construed as some type of an offer of settlement which would make it inadmissible.

MR. WENTZEL: Also, Your Honor, as so often happens when these disputes really heat up and get into the hands of the lawyers, that letter was objected to by my partner, Mr. Kelly, who wrote a letter to counsel for Wonder in response to it and, again, it goes into subjects of settlement and so forth, and it just seems to me that neither letter ought to be before the jury.

THE COURT: Well, I made the ruling. Now that the jury is out and we have some few minutes, I have a practice, gentlemen, which you might or might not know, to permit lawyers to speak in summation as long as they wish as long as they tell me in advance how long they wish with the promise on my part to hold them to the second of that time. In other words, if they're in the middle of a sentence and that time expires, I shut them off. The practice here is that you have an opening and rebuttal. How long did you want, total time?

MR. WENTZEL: I would think an hour would be sufficient, Your Honor, and I would hope to come in under that.

THE COURT: Mr. Foley, can you guess?

MR. FOLEY: Well, I could until I heard that. Yes. I would say fifteen minutes.

THE COURT: Well, I will hold you each to what you say, but that raises the next question about whether we can do it all today and whether I can pass on these requests and then charge, and I think I can do some of it, but not all. I only got the defendant's request just now.

Let me go over both of them and I will mark them so there can be some disposition as to that. If we sum up today, my problem is also complicated because Monday, the first hour and a half is devoted to naturalization, and it only takes me two or three minutes, but with the aliens all being present and being new citizens, then they have to fill out forms to take the certificate home with them, and that takes about another hour and a half. I have told the lawyers in the school segregation case that we had a little bit of the other day we would continue their case with hearing the members from the Board of Education at a quarter after 11. Did you hear from them?

THE CLERK: No. In regard to the naturalization, it may not take quite as long.

THE COURT: It will take an hour anyway, won't it?

THE CLERK: Approximately. I understand there are approximately 80 people rather than the 100 I expected.

THE COURT: Even that, we are going to lose the morning. I would be willing to either have summations today or have them on Monday, and it would have to be in the afternoon or if you wanted, on Tuesday, but I don't think and I am sure you can agree that we can't do it today. One, you run into the trouble of coercing the jury late in the afternoon.

MR. WENTZEL: Your Honor, it would be nice if we could argue, charge and let the jury deliberate all at once.

THE COURT: Well, the lawyers seem to think there is some magic to that.

MR. DUNN: It sustains us, Your Honor, in our frustrations.

THE COURT: That would make it almost Monday with a gambling aspect to it because we don't know how long this hearing on this school segregation case is going to take. I must say lawyers are rather quick, but they might run into trouble. Would you talk about it and let me know what your joint opinions are?

(Court recessed at 1:55 p.m. and reconvened at 2:15 p.m.)

THE COURT: Gentlemen, what plan would be best?

MR. FOLEY: Your Honor, we have just been informed that there is a possibility it could be Monday.

THE COURT: I just thought of that myself. I would rather have it on Monday if it is agreeable to everybody, but it will have to be about quarter after eleven.

MR. FOLEY: Fine, Your Honor. I have to come from New York.

THE COURT: Is that agreeable, Mr. Wentzel?

MR. WENTZEL: Yes, Your Honor.

THE COURT: All right. So when Mr. Garrity finishes his testimony and that is the end of the case, I can rule on your Requests To Charge.

MR. WENTZEL: Fine.

THE COURT: Let me give this to my secretary and let her call the other lawyers then on this.

(The Judge left the bench momentarily)

THE COURT: Will you call the jury in, please?

(The jury entered the courtroom at 2:18 p.m.)

THE COURT: All right. Mr. Garrity, please.

MR. WENTZEL: Plaintiff would like to call Mr. Garrity.

THE COURT: Yes.

PAUL C. GARRITY, called as a rebuttal witness, having been previously duly sworn, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Garrity, did you consider your Mark IV flashlight to be a replacement for the disposalamp made by Wonder when you first put it on the market?

A No. I did not. I thought of it as part of a full line. It was at a much higher price.

Q What was the price of the disposalamp?

THE COURT: He has already told us that.

THE WITNESS: The disposalamp was $1.98, and the French light was $1.79.

Q The Mark IV was $1.98?

A Mark IV was $1.98.

Q Now, where did you first obtain the batteries for the Mark IV?

A From Piles Wonder Corporation.

Q And how many orders of batteries did you place with them?

A To the best of my recollection, we placed an initial battery order for a very small quantity to test them in our testing laboratories to see whether they were adequate for the product that we wanted to put out.

Q Do you recall when that was?

A I think that was in June or July, sometime in the Summer of 1973 -- '72. The Summer of '72. We then in August or sometime placed an order for 100,000 or more batteries from Piles Wonder which were shipped to us and we used and we placed an additional order for batteries from Piles Wonder, Connecticut, U.S.A. because now Piles Wonder said they had batteries locally. I think we placed that order in December of 1972.

Q Was that order filled?

A No. It was not.

THE COURT: Well, was the other order for 100,000?

THE WITNESS: The order that we placed in August was filled.

BY MR. WENTZEL:

Q What happened with respect to that December order?

A We couldn't get shipment on it, so we cancelled the order.

Q How long would shipment normally take?

A Well, from one part of Stamford to another part of Stamford, an hour or two. One day, certainly.

Q And did you thereafter buy any batteries elsewhere?

A Yes. I did. I had to to keep my business going. I bought them from C.G.E. Corporation in France.

Q When was that?

A That was in late December of 1972.

Q Now, if you received a delivery, a shipment of the Wonder disposalamp into New York around July 18th to 23rd --

A Yes.

Q -- in 1972, would you tell us what the next steps are?

THE COURT: First tell us what you mean by "receiving".

MR. WENTZEL: On the boat, arives on the boat.

THE COURT: He hasn't got his hands on it yet?

THE WITNESS: No.

THE COURT: That is not receiving. That is why I asked the question.

MR. WENTZEL: Let me modify it then.

Q Would you just tell us what the steps are after a shipment arrives in New York and on the boat and how long each of the steps take until the product is finally in the hands of the consumer?

THE COURT: In the consumer's hand?

MR. WENTZEL: Yes. So that someone could turn on the flashlight and see if it worked.

THE WITNESS: First, if a shipment --

THE COURT: Well, can you give us any idea with any closeness to reality?

THE WITNESS: Certainly.

THE COURT: Including the last part.

THE WITNESS: Certainly, I believe I can.

THE COURT: I wait with interest. Yes.

THE WITNESS: When a shipment would come into New York, number one, the papers in that shipment would be accompanied by customers' papers which would be forwarded to our customers broker who would clear the shipment with the customer's agent. The merchandise -- once they were cleared with the customer's agent, when they were physically off the boat and cleared in the customs house, then we would get notification that we could pick up the merchandise.

We would then have a truck go down.

THE COURT: He wants to know how long that procedure took.

BY MR. WENTZEL:

Q How long did that process take?

A From the time that it landed through customs clearance, going down and picking it up, it took five to six days.

Q All right. Now, you have gone down and picked it up. You bring it where?

A We would bring it to our warehouses in Stamford.

Q What is the next step?

A The next step, in our warehouses in Stamford, the display merchandise would be put into inventory. The merchandise, the small parts that were used on the blister program would be sent to our blister operation to be put into blisters and put into inventory. From then, if we had orders in the house for that merchandise, if we were completely out -- I am taking this specific shipment. If we were completely out of merchandise and we had nothing in inventory --

THE COURT: Wait. Did that ever happen?

THE WITNESS: It could have, Judge.

THE COURT: No. The question is: Did it? See, the man wants to know whether you could tell how long it took in days, months or years between the time the ship landed in New York and the time a consumer put his fingers on it and switched the thing, and you said you could.

THE WITNESS: I can.

THE COURT: All right. Now, you say it depends on whether you were out of lighters or not.

THE WITNESS: Let's take the exact same flashlight. Now, it's in our warehouse, six or seven days later.

BY MR. WENTZEL:

Q Five or six days?

A Five or six.

THE COURT: No. You didn't count the time it takes from New York to Stamford and putting it in a warehouse. You said it took five or six days to get it through customs.

THE WITNESS: Five or six days to get it through customs and into my warehouse. Okay?

BY MR. WENTZEL:

Q Go ahead.

A Then the merchandise would be shipped against an order to a customer who may be anywhere in any of the fifty states.

THE COURT: And by a customer, you mean either the reps or your salesmen?

THE WITNESS: A customer would be a wholesaler or a chain.

THE COURT: All right.

THE WITNESS: If the merchandise -- using an average, and I can't take each shipment and explain where it went, but using an average, we figure it takes about seven days to get to a customer in shipping time. That is an average from California to, let's say, locally in Connecticut. We say about seven days to get to a customer. Then it goes into his inventory, then it has to come from his inventory out to be reshipped to a retailer. Then the retailer receives it in his inventory and he has to put it up on the retail counter.

In our business, we figure 30 days from the time we ship it until it gets up at retail. When the consumer buys it, I don't know, but up at retail.

THE COURT: You said you don't know?

THE WITNESS: I can never tell.

THE COURT: I thought before you said you could tell. That is the reason I pressed you.

THE WITNESS: I'm sorry. Then I retrack that. I cannot tell when the consumer buys it, but I can tell when it gets up at retail.

BY MR. WENTZEL:

Q That is the point at least it is available to a consumer?

A Available to a consumer, but I don't know when he buys it.

Q That comprises some 42 days total?

A I would say so.

Q Let me show you Defendant's Exhibit O and ask you whether you could tell whether that flashlight has been repaired?

A Certainly. Yes. I can.

Q How do you tell that?

A By that ridge across the top.

Q Is that a product you were willing to sell to your customers?

A Absolutely not. That is why I wouldn't sell any. That is why I refused to sell them to my customers. It's a refabricated defective product.

THE COURT: It's defective because it's been refabricated or for some other reason?

THE WITNESS: In my opinion as a businessman --

THE COURT: My question, Mr. Garrity, was: Is it an imperfect product or whatever you call it because it was repaired or for some other reason?

THE WITNESS: It is defective in my opinion because it does not have --

THE COURT: Oh, God. Thank you. I will withdraw the question. Thank you so much.

BY MR. WENTZEL:

Q I show you Plaintiff's Exhibit 16 and 17 for identification and ask you whether you can identify where those came from?

A From Piles Wonder France.

Q And where did they come from today?

A They came from our warehouse in Stamford. Mr. Coppola brought them up here today.

Q Are those part of the inventory that is in the warehouse now of returns from customers?

A Yes. They are.

Q Now, would you examine the switch on those flashlights? The switch is not operative; is that correct?

A No. It is not.

Q Does that switch have the same defect insofar as you can tell from turning it as the returns you got from customers in 1972?

A Yes. It does.

MR. WENTZEL: I offer Plaintiff's 16 and 17 in evidence, Your Honor.

THE COURT: I'm lost on the number there. You showed the witness 15 and 16, did you?

MR. WENTZEL: I'm sorry. 16 and 17, Your Honor.

MR. FOLEY: I object to them, Your Honor. I don't know the point of them and as a matter of fact, they're highly suspect in my opinion.

THE COURT: Well, you can argue that

point to the jury, counsel, but it doesn't have to do with the relevancy. They're relevant because the testimony was those were manufactured in some particular year, and it relates to the testimony in combination between Mr. Gerweck and the other gentleman about the code numbers and so forth. I will receive them. You may have an exception.

(Two flashlights received and marked Plaintiff's Exhibits 16 and 17, respectively.)

MR. FOLEY: Let me say, Your Honor, I may have to return Mr. Sternlicht to the stand.

THE COURT: I get paid at the end of the month. I don't know when you get paid. I will be here.

MR. FOLEY: All right.

BY MR. WENTZEL:

Q Just one more thing. I show you Defendant's Exhibit R. Did you place that ad, Mr. Garrity?

A Yes, I did.

Q When?

A I placed it on March 15, 1973.

THE COURT: Oh, you couldn't have placed it on that date. Isn't that the day the magazine hit the streets?

THE WITNESS: I placed it perhaps two weeks before the magazine came out. This is a trade magazine, not a consumer's magazine.

THE COURT: Are you suggesting you can place an ad in a trade magazine two weeks before it is published?

THE WITNESS: Yes.

BY MR. WENTZEL:

Q And why did you run that particular ad?

A I ran that particular ad because we had introduced our new product. We were unable to get any of the former disposalamp from the Piles Wonder Corporation from the Summer of the year before. I had to do something to keep my business operative and going, and I had to have my new product introduced on the market.

MR. WENTZEL: I have no further questions.

MR. FOLEY: I have a couple of questions, Your Honor.

THE COURT: No questions, you say?

MR. FOLEY: A couple.

THE COURT: All right.

CROSS EXAMINATION

BY MR. FOLEY:

Q Mr. Garrity, the invoices dated

July 3rd, 1972, can you tell me again when they probably would have been in your warehouse?

A The invoices dated July what? Did you say 23rd?

Q July 3rd.

A July 3rd. I think the shipping time from Europe to the U.S. can run anywhere from seven to fourteen days. So I can't specifically speak for that invoice, but it would be somewhere between seven and fourteen days before it arrives, depending on the boat and then there would be another five or six days before it got into our warehouse. Does that answer your question?

Q All right. And then how long would it take from then until it got into the hands of consumers?

A Before it got into the hands of the consumer, I don't know. The hands of the retailers I know, but not the consumer.

Q All right. Who would first notice the defective switch generally?

A The consumer.

Q All right. Can we just say that on August 25, 1975 when you first notified Wonder of the complaints you had heard, that would have been about the proper time to have received complaints based upon lights received in July of 1972?

A I did not complain to Piles Wonder in August of '75. I complained to Piles Wonder in August of '72.

Q Right.

A And the flashlights that we received in the July shipment, the end of July, August, it is very questionable -- let me answer it the only way I know how. That if the merchandise arrived and got through all the channels of distribution and a consumer bought it on, let's say, August 15th, August 20th, I don't care when, and it was defective, he would then go back to the store, make the complaint, the product was defective, the store then in turn would go back to the wholesaler and say "This product is defective", and the wholesaler would come back to me and say "This product is defective." That is the chain of events of how a defective product comes back to the manufacturer.

Now, whether it would happen instantly one day after they received it at retail, I question, but I can't swear that one day -- that somebody didn't do that on one particular day.

Q All right. You recall that you sent out a sales bulletin on January 26, 1973, announcing that you discontinued the old disposalamp?

A Yes. I do.

Q Let me read you from Defendant's Exhibit E, a Sales Bulletin To All Salesmen. Do you recall that?

A Yes, I do.

Q "Because quality of product has deteriorated from our supplier in France we are taking this product off sale. It has always been the intent of your company to bring the finest quality and most up-to-date product to market. Old disposalamp fits neither of these objectives. Disposalamp Mark IV is the ideal replacement and most distributors have changed their orders."

What do you mean by "the ideal replacement" there in your Sales Bulletin?

A The ideal replacement was -- when you have a sales organization out in the field who are making their income from selling a product and that product is no longer available to them to make income from, you put another product out or hopefully, you can put another product out that replaces the other product so they can make their income from that. So actually, I thought of it as a replacement. The other was no longer available to us and this was a replacement at a higher price.

Q Well, it was an ideal replacement, but for your sales reps?

A It was an ideal replacement for the sales reps. It was an ideal replacement for the consumer. It was an ideal replacement for Garrity Industries.

Q Now, the last part of the sentence, "Disposalamp Mark IV is the ideal replacement and most distributors have changed their orders."

When would the distributors have changed orders based upon this bulletin, dated January 26, 1973?

A I will try to answer that if I were a salesman and I had an open order for the other flashlight that I could not have shipped to my distributor, I as a salesman, which I have been, I would go in and change that distributor's order from the old flashlight that was no longer available to the new flashlight rather than lose commissions.

Q You changed the order yourself?

A No. I am saying I would as a salesman. No. I am not a salesman. I used to be.

Q When did the distributors know that Mark IV was a replacement for the old disposalamp?

A They should know it when the men called on the distributors, when they called on each one of their customers telling them, they should know it from this ad in March.

THE COURT: They couldn't know it from the ad in March. Are you suggesting that they knew it before it was published?

THE WITNESS: No. I am saying this ad is a public ad. They would know it when they see this ad, but they wouldn't know it before that because that bulletin didn't go to the customers.

BY MR. FOLEY:

Q When did salesmen, managers and all reps know prior to January 26, 1973 when you intended to abandon the old disposalamp and substitute the Mark IV?

A They do from that bulletin.

Q They did not know previously?

A No.

Q How would they know how to change their orders? You recite here "Most distributors have changed their orders". How did they know how to do that?

A That is more in the merchandising and selling. They wouldn't know how to do that. They would not know.

Q Then this is untrue. They hadn't changed their orders; is that correct?

A Maybe. Yes. Maybe some had, maybe some hadn't. I don't know.

Q Are you used to putting out untrue statements like that to your reps?

A I don't think it is an untrue statement, Mr. Foley. That was put out after the product had been discontinued, after Mr. Courtecuisse had notified me the product was no longer available.

Q Didn't you advise your representatives that you were getting rid of this old disposalamp long before this bulletin issued?

A No, sir.

Q You did not?

A No, sir.

Q How did they know how to change their order?

A This bulletin is a sales bulletin to excite and enthuse salesmen, and this is why this wording is in here.

Q All right. Then they haven't changed their orders, is that what you are saying, by January 26th, 1973?

A I don't know whether they did or not as I said a few minutes ago.

Q Now, you tell the Court and jury that the ad shown here at page 42 of the United States Tobacco Journal, Defendant's Exhibit R, was not placed in the year 1972?

A It was placed in the year 1973.

Q Was this not ordered in the year 1972, Mr. Garrity?

A I don't know -- this ordered (indicating)?

Q Yes.

A I doubt it was ordered in '72. This magazine takes ads two or three weeks before they are published. I would doubt it, but I can't swear to it.

Q You say that the United States Tobacco Journal lead time is two or three weeks?

A It's different for me, for our company. I don't know.

Q You mean you get special privileges with them?

A Yes, sir, but I think it's two or three weeks for anyone.

MR. FOLEY: That's all, Your Honor.

THE COURT: Anybody else? Any redirect?

MR. WENTZEL: No, Your Honor.

MR. FOLEY: Let me just say one word when I go back to the table, and I will let Your Honor know in one second.

MR. WENTZEL: Is Mr. Foley through?

THE COURT: He said he would let me know in a minute.

MR. FOLEY: One second. No, Your Honor. I rest.

MR. WENTZEL: Just one more thing, Your Honor, with Mr. Garrity.

REDIRECT EXAMINATION

BY MR. WENTZEL:

Q You note in the sales bulletin, Defendant's Exhibit E that you had some success, initial success with the sale of the Mark IV. Do you see that in about the fourth or fifth paragraph?

A Yes. I do.

Q Did you have enough Mark IV to cover those new orders and to replace all the defective Wonder products that were coming back at the same time?

A No.

MR. FOLEY: At what time, Your Honor?

THE COURT: I have no idea.

BY MR. WENTZEL:

Q All right. The Mark IV was introduced when?

A Mark IV was introduced in September, and he just reminded me of something. The Mark IV was introduced in September of 1972, and at that time, from '72 through the time of this bulletin, yes, there were some distributors that changed their orders from the Piles Wonder flashlight to the Mark IV flashlight.

I happen to remember. It is true. It was on the market six or eight months. There were some changes. Absolutely. That bulletin is correct.

MR. WENTZEL: Nothing further, Your Honor.

MR. FOLEY: I have no more, Your Honor.

THE COURT: I am trying to figure out when you told us that you bought the 100,000 batteries from the defendant, and my notes indicate that you said it was August. Is that about right?

THE WITNESS: I think it was about, correct, in August.

THE COURT: And do you remember when you received them?

THE WITNESS: I would think if it were early August, we might have received them in late August or I don't know.

THE COURT: In any event, the Mark IV was on the market in September?

THE WITNESS: Introduced in September, Judge. We might have shipped it out September 15th or September 30th, but to the best of my recollection, we introduced it in September of 1972.

THE COURT: Thank you. That is all,

gentlemen?

MR. FOLEY: Yes.

THE COURT: Thank you, sir. Both sides rest now?

MR. WENTZEL: Yes, Your Honor.

THE COURT: Gentlemen, in your absence we tried to figure out what would be the best way to complete this case, and it was agreed that it didn't make too much sense to have summations and charge today because it would then be too late, and so we worked out a deal that come Monday morning at 10 o'clock, we will all be here, including yourselves, the lawyers will sum up and I will charge and you will have the case. But I am giving you the wrong hour. I have another matter on Monday morning and it is scheduled to finish about quarter after 11. I have naturalization in which the aliens are sworn in as citizens, and that only takes a few minutes, but then the aliens have to fill out forms so they get a certificate showing that they are newly naturalized citizens. That takes about another hour.

Quarter after 11 on Monday and, God willing, you will have the case possibly near lunch time and there it will be. All right. Good night and thank you. Quarter after 11 on Monday.

(At this time the jury left the courtroom.)

THE COURT: Gentlemen, I have made some markings on the Requests To Charge that you have given me, and I will address myself to the plaintiff first, if you have a copy handy.

MR. WENTZEL: Yes, I do, Your Honor.

THE COURT: Let me tell you generally speaking, I very seldom charge as requested if the charge includes facts that are in dispute or I think they are in dispute, and that affects Mr. Foley's request more than anybody's. But with regard to the plaintiff's, I will not charge request number 1, but I will charge in substance number 2. I don't think number 3 or 4 or 5 is in issue. Would you look at them quickly? There is no plea that I read here that there was a late notice of the defects.

MR. WENTZEL: No. I think you're right, Your Honor.

THE COURT: So we will skip 3, 4 and 5.

6 I will charge in substance, except that part that relates to facts like the phrase "would give good service", "were of the best manufacturer" and "ran of an even quality", and so forth. But in substance, the heart of it I will charge.

As I will with 7 and 8 and 9. Coming to 10 and 11, my recollection is that those two items don't refer to anything involved in this lawsuit. I think in order to prove it, you have to prove that -- take one piece out of a package and then you return the whole package.

MR. WENTZEL: Your Honor, we don't have a dispute as to whether they were returned or not.

THE COURT: 11, and I think 12 has that word "recently" in it, and I think that makes it defective. But anyway, it's not too clear to me whether the proof is clear as to what defective units were recently returned, and the witness did testify that they have a great many, some 14,000, I think. Anyway, you have an exception for me not charging 12.

13 I will charge in substance. I

don't recall any evidence relating to your request number 14 because I think it's really included in another charge where you have something for resale. That part is all right. But in any event, you have an exception for me not charging 14.

I will charge 15 in substance, and the other one, 16, I will not charge as you have it. Nor will I charge 17. You have an exception to both of those.

Mr. Foley, I find almost all of yours without any exceptions are statements of facts that might very well be in issue.

MR. FOLEY: I thought I stated the ones mostly that were not in dispute.

THE COURT: Well, I intend to paraphrase what I think are not in dispute in my charge, but --

MR. FOLEY: I hope they help you, some of them.

THE COURT: Well, it might very well be. Of all of them the only one I can even think of that is not contested is 13, about the mitigation, except for the last part and the phrase "including payment of invoices". But the first part states the law correctly, "Under the law of damages a person has an obligation to mitigate." Well, I have marked them all "No" except with regard to number 2. If I left out May and June '72 I could say "Piles containing a defective switch and some were sold and delivered to the plaintiff."

I propose to tell the jury that you did breach the warranty of fitness for use, which I think you admit.

MR. FOLEY: Conceded.

THE COURT: Well, anyway, of the first eleven requests, I do not propose to charge any of them, nor number 12. 13 in part I will, and 14 in substance. No on 15 because it does relate to a fact.

I think you are correct on 16. I will hold that in abeyance until I -- well, 17 is correct, but the jury has to decide what the value is of the under-valuation of the franc.

18 I could charge, but not in the way you have it, but I will charge it in a different language.

So there we are, gentlemen. We are agreed that you want an hour and you, 15 minutes. Do you want to change that or not?

MR. FOLEY: Yes. Right now I will change it, Your Honor, because I thought we might do it today, but as long as you are holding me, I will say that --

THE COURT: I will hold you.

MR. FOLEY: Well, let me have a half an hour.

THE COURT: You have it. Good night.

(Court adjourned at 2:50 p.m.)

CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript of notes taken by me to record all proceedings at the hearing held on October 15, 1976 in the United States District Court for the District of Connecticut, at Waterbury, Connecticut, before The Honorable THOMAS F. MURPHY, Senior United States District Judge.

Official Court
Reporter

Dated: Feb. 9, 1977
At: Cheshire, Connecticut

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- x

PAUL C. GARRITY and
GARRITY INDUSTRIES, INC.,

Plaintiffs

vs. CIVIL 15,922

SOCIETE LES PILES WONDER and
WONDER CORPORATION OF AMERICA,

Defendants

- x

OCTOBER 18, 1976
AT WATERBURY

BEFORE:
THE HONORABLE THOMAS F. MURPHY,
Senior United States District Judge

JURY TRIAL

Appearances:

For the Plaintiffs:

CASEY, LANE and MITTENDORF
26 Broadway
New York, New York 10004
By: ALAN R. WENTZEL, ESQ.

PHILIP R. DUNN, ESQ.
62 LaSalle Road
West Hartford, Connecticut 06107

For the Defendants:

PENNIE & EDMONDS
330 Madison Avenue
New York, New York 10017
By: JAMES FOLEY, ESQ.
JOSEPH J.C. RANALLI, ESQ.

(11:10 a.m.)

THE COURT: Somebody told me that there is a motion.

MR. FOLEY: Right, your Honor. The motion principally relates to the exhibits and the testimony with respect to incidental damages.

Now, I would like to strike all those exhibits on the grounds that the documents were requested during discovery and never produced and has resulted in the trial by surprise here with respect to incidental damages, your Honor.

By interrogatory dated 1-2-74, we said "State the method and means used by the plaintiff to calculate the amount of damages claimed under each claim for relief in the complaint."

And the response was -- no. In Interrogatory 16, "Identify all documents used in calculating damages alleged in each of plaintiff's claims for relief in the complaint."

Plaintiff's response to both of the above was an objection on the ground of an attorney work product and attorney-client privilege.

Thereafter, we elicited the same kind of subject matter in the deposition of Paul Garrity on July 2 with respect to the advertising expenses, with respect to the dollar guarantee. Mr. Shaughnessy indicated he would check for all that, and he then wrote the letter of 4-75 with respect to the guarantee saying there were no such documents, yet we have got testimony here by Mr. Chymeryz and Mr. Coppola that there were documents indicating that the guarantee was active and that there were returns made pursuant to the guarantee, and I think all of these exhibits that were put in with respect to those damages should be excluded, your Honor.

THE COURT: Well, it relates to what claim, the incidental damages or that includes profits, lost profits.

MR. FOLEY: No.

THE COURT: Just the sixteen thousand odd, is it?

MR. FOLEY: No. Their incidental damages relating to the storage all testified by Mr. Chymeryz and Mr. Coppola, the Traffic Manager, where they showed they had so much for shipping them back to us, where they had so much for keeping them there, they had the indication of the charging for the rental of the space where they kept the eighty-three thousand, and I can pick those out if you want, your Honor.

THE COURT: It's the claim for sixteen thousand dollars incidental to damages, is that it, for storage, inspection, freight charges and incidental expenses? Is that what you are addressing yourself to?

MR. FOLEY: I forget whether that is the total amount, your Honor.

THE COURT: You think it is not the total?

MR. FOLEY: I don't know if that is the total.

THE COURT: That is the amount they claim in their brief on Page --

MR. FOLEY: Is that our brief you are looking at, your Honor, Wonder's brief?

THE COURT: On Page 6 of the Plaintiff's brief they say "Garrity's damages consist of credits and returns to Wonder at the agreed rate of forty-one cents per unit, totalling approximately seventy-eight thousand dollars, storage, inspection, freight charges and other incidental expenses totalling approximately sixteen thousand dollars..."

MR. FOLEY: That's it, your Honor.

THE COURT: "...and lost profits on the

defective units approximately seventy-one thousand dollars."

MR. FOLEY: It's the sixteen thousand; right?

THE COURT: Sixteen thousand.

MR. FOLEY: Yes.

THE COURT: I will hear you counsel on that now.

MR. WENTZEL: Your Honor, at the time those interrogatories were asked, we did answer as best we could calculate damages.

THE COURT: No. There is no doubt about what the answer was. He read it to me.

MR. WENTZEL: Well, it shows at that time five thousand six hundred ninety-seven dollars sixteen cents unused advertising displays. Nine hundred --

THE COURT: No. Counsel, he wanted to know, as I understood the inquiry, how do you prove those? What records or things have you got? And you said "You can't be told because they're lawyer's work product."

MR. WENTZEL: At that point, he wanted to know the calculations, and that was the case. Now, if he disagreed that that was improper, objected at that point in the case, then he had his remedy.

THE COURT: I am going to deny the motion somewhat on that theory, Mr. Foley, that you had to do something about it when you were being buffeted about by the plaintiff's counsel, in your phrase, but not having done that, it is too late now. Well, anyway, that is the ruling. You have an exception.

MR. FOLEY: All right, your Honor. I have one more motion. I move for a directed verdict in behalf of the defendants.

THE COURT: I was going to tell you that, counsel, I am going to direct a verdict for the plaintiff for a credit of forty-one cents on all of the defective units that it returned.

I am also going to direct a verdict for the defendant in the sum of one hundred thirty some odd thousand dollars on their past due account -- one hundred thirty-three thousand four hundred forty-six dollars thirty-two cents.

I am going to direct a verdict on the two thousand five hundred ten dollars seventy-eight cents which is the error in the conversion of the French franc into dollars.

Does that answer your question?

MR. WENTZEL: Could I have that last figure again, your Honor?

THE COURT: The very last one I read?

MR. WENTZEL: Yes.

THE COURT: Two thousand five hundred ten dollars seventy-eight cents, which was based upon the testimony of Mr. Sternlicht. Is that his name?

MR. FOLEY: That's right, your Honor.

THE COURT: And an exhibit called S, as I remember.

MR. FOLEY: That's right, your Honor.

THE COURT: Does that answer your question, Mr. Wentzel?

MR. WENTZEL: Yes. I just wanted to get the figures, your Honor.

MR. FOLEY: It answers mine too, your Honor. I just would now like to inquire, all that is left for the jury then is the question of the number of returns?

THE COURT: The number of defective lamps returned on the plaintiff's case and the consequential damages of lost profits, and that depends. I will read you that part of my charge that relates to that, if you wish.

When merchandise is sold to a buyer who is in the business of reselling such merchandise and the seller knows that and a defect causes a loss of profits on such resale, such loss of profits is a part of the buyer's damages. Whether or no you find that the plaintiff is entitled to damages for its lost profits, if any, you must consider plaintiff's other claim, that is, the claim of incidental damages. Incidental damages resulting from the seller's breach of warranty include expenses reasonably incurred in inspection, receipt, transportation, care and custody of goods rightfully rejected by the buyer. In connection with all forms of damages, the law of damages requires that the person who seeks damages has an obligation to mitigate or lessen his damages in every reasonable way.

Accordingly, if you are persuaded that the defendant by a preponderance of the evidence has shown that the plaintiff could have reasonably presented a loss of profits on defective flashlights by accepting the defendant's offer to repair such flashlights or by purchasing new flashlights from the defendant for cash, the plaintiff is not entitled to any lost profits on any of the flashlights sold and then returned as defective.

And you wanted to use the easel, Mr. Wentzel?

MR. WENTZEL: Yes, your Honor. With these various numbers, I thought it might be helpful if I could write them out.

THE COURT: What a famous judge out west did with regard to that, that is not unusual in the plaintiff's case for damages to want to use a blackboard for something, and the way he answered that was: "Yes. Of course, you can use the blackboard or easel, but I then might very well comment on the evidence." And he said that usually stopped the use of the blackboard. I will adopt that.

Shall I call the jury in, gentlemen?

MR. FOLEY: Yes, your Honor.

(At this time the jury entered the courtroom.)

THE COURT: Good morning. All right. Mr. Wentzel will address the jury first, and then after Mr. Foley speaks, he will have an opportunity to speak in rebuttal. Mr. Wentzel, please.

MR. WENTZEL: May it please the court, gentlemen of the jury, I would like to first thank you for your attention you have given to us in this case throughout the trial and the consideration you will give to it in concluding it. I know that some of the facts, particularly the numbers and so forth, may have been a little difficult to follow as they came into evidence. However, we were trying to shorten the case as much as possible, and at this point I will now try to sort everything out for you so that you can see what the facts are, add up the numbers, and I will try to give you some help in deciding how much is owed in this case.

I would like to preface my remarks by repeating what I said earlier, and that is that what I say now is not evidence. What you heard up there was evidence (indicating). What is in these exhibits was evidence. What was read from the depositions is evidence and, of course, the stipulations of counsel. So if anything I say disagrees with your recollection of that evidence or what is in those documents, you should certainly disregard it, and that goes for Mr.

Foley as well.

You recall in my opening statement I said that we would prove that in the summer of 1972, Garrity Industries began receiving complaints about the disposable flashlights sold to it by Piles Wonder as being defective. Piles Wonder acknowledged the problem, promised a credit to Garrity Industries for its costs in shipping the flashlights as replacements, but these promises were not carried out, and as a consequence, Garrity Industries suffered damages in the form of its landed costs, its lost profit and incidental expenses, totalling approximately one hundred sixty thousand dollars, an amount which exceeds the balance owed to Piles Wonder on its outstanding invoices.

I think we have now proved all these facts, and I would like to review them with you.

First, the evidence is certainly clear that during some period prior to the middle of 1972, Piles Wonder made many thousands of defective flashlights out of inferior scrap plastic. They admit knowledge. Mr. Courtecuisse's deposition, which I read, admits knowledge of this defect in May and June of 1972. You may recall Mr.

Bertin who came here from France and testified first that they learned of the defect in July of 1972, but then when I read him his deposition, he backtracked that to June of 1972, but then he said "Well, in July I got assurance from the factory that Mr. Garrity's flashlights weren't defective because they were a different color."

Of course, then it turned out that the factory was closed in July, so he thought, well, maybe he got that assurance in August.

Well, in any event, what is certainly undisputed is that Garrity Industries was not notified from May until September of this defect. Shipments were made to them, hundreds of thousands of flashlights shipped out to his customers under his label, and nothing was said and nothing was done. Of course, Piles Wonder did act with respect to the flashlights in Europe that they sell under their own label and they recalled all those. But Mr. Garrity had to find out for himself, and it was he that brought it to the attention of Piles Wonder and only at that point did Mr. Bertin and Mr. Sternlicht appear at Garrity's office to discuss the problem. And at that time, and this again is undisputed, Mr.

Garrity so testified, the depositions I read, Mr. Sternlicht and Mr. Bertin were here, all agreed that Piles Wonder agreed to pay Garrity's costs and they promised to deliver replacements for these defective goods. There was no mention at that time of repairs or of the six percent credit or paying his bills before he would be allowed to get replacement.

Now, what was done by Piles Wonder to follow up on this promise? You recall I asked Mr. Sternlicht that question. He couldn't think of anything that was done until way down in November when he went over to France. Well, of course, nothing was done and a month later, on October 6th, and this is a letter that is in evidence, it is Plaintiff's Exhibit 2, Mr. Garrity wrote to Mr. Courtecuisse, the head of Piles Wonder, and said "Look. A month has gone by. I've got these promises and nothing has been done. What do you propose to do about it?" He said he was still getting returns from his customers of defective flashlights. He had still not been told what the cause of the defect was. No replacements had been shipped to him. No credit had been given to him.

At that point in time, he was being forced to replace the defectives out of his inventory, and because he knew there was a problem but didn't know what it was, he undertook to take a man off his regular job and go out in the warehouse and open up every one of those packages that he was sending out, click on the flashlight to see if it worked and hoping that that was an adequate test. He was never notified of any other test that he should perform. Of course, the replacements that he sent out also turned out to be no good. His inventory was contaminated.

Again he wrote to Piles Wonder and said "Look. I'm losing customers. You have got to send me some more product."

Well, on October 10th, Plaintiff's Exhibit 3, there is a Telex from Piles Wonder saying "We will ship you one hundred thousand newly produced flashlights by October 31st. We will issue credit notes for your full cost on the defective flashlights."

Well, that was promising. But what happened? October 31st came and went. And we know from Mr. Bertin's testimony here at trial that during that period of time Piles Wonder never even started to produce the flashlights with the Garrity trademark on them.

So on November 2nd, Mr. Sternlicht wrote to Garrity. He said "Well, it now turns out we are not going to be able to ship you anything until December 15th." That is Plaintiff's Exhibit 4. What has happened to Garrity now? The Christmas season is gone. He has lost it. He has no flashlights to send out to carry on his business because we know from the testimony we have heard that if they ship it on December 15th, it is going to take twenty days to get over here and another thirty or forty days by the time it reaches the consumers. That's sometime in January or February. But even then during November, having promised a shipment on December 15th, Piles Wonder still did not start producing flashlights with Garrity's label on them. They were by this time, however, producing flashlights, new flashlights with their own label as Mr. Bertin testified.

Well, on November 17th, Mr. Garrity again wrote to Mr. Courtecuisse and he again asked for shipments of first quality flashlights, and in that letter, he said he wanted one hundred thousand of them immediately. He wanted another one hundred thousand by January 10th, and he wants Mr. Courtecuisse to schedule future months with deliveries. Let him know what he can send them.

Now, that, of course, does not sound like a company which claims to replace Piles Wonder's product with its own Mark IV. Here they are ordering two hundred thousand more flashlights.

In the middle of November, a meeting was held over in France. Mr. Sternlicht testified to that. There was more testimony about it from the depositions that I read. At that point, Mr. Garrity's position was this: He had invoices for four hundred eighty thousand flashlights that had been delivered to him in 1972. They hadn't been paid for yet. He knew that Piles Wonder had recalled all the defective flashlights under its own label, but not on his. For all he knew at that time, all the flashlights that he had in his inventory were defective. That was the way Piles Wonder regarded them. His losses were mounting, the returns were pouring in by the thousands. He was forced to hold his inventory as he said in the letter of November 7th, meaning that at this point he could no longer trust that inventory to furnish replacements for the defectives that were coming in.

The promises made by Piles Wonder in September and again in October had been unkept. So it was perfectly natural for him to refuse to pay those invoices until that settled.

What was decided at this meeting over in France? First, in Mr. Sternlicht's deposition that I read, it was decided that Garrity would get nothing until he paid for all the defective goods. Second, it was decided that Garrity would get no new shipments unless he accepted a proposal to repair, which at this point, had not even been made. Third, that instead of a credit for full costs, he was only going to get six percent, and he could get more if he could prove that he had more. That is an interesting contrast with the way Piles Wonder treated distributors who sold flashlights under its own label. They were all notified and their entire shipments were regarded as defective, not just six percent.

Finally, at that meeting in November over in

France, Piles Wonder decided to go into business in the United States for itself. Now, Mr. Sternlicht said that this discussion about going into business for itself referred to other flashlights, The Smart, the Rally, two other kinds of flashlights in addition to the Wonder flashlight which Piles Wonder has in a line of disposable flashlights. Well, I simply raise the question on that: If that is so, then why has Mr. Bertin admitted Piles Wonder was producing only flashlights under its own label if it really intended to continue Mr. Garrity as a customer over here and sell under his label as it had for the past four or five years? Why wasn't it making any flashlights for him?

Mr. Garrity's response after all these proposals had been put to him was that "Look", he said on November 27, 1972, and this is in evidence, "We don't intend to hold up payment on any invoice in lieu of any settlement of any claim that we might have regarding the merchandise which you readily agreed to reimburse us for this total. However, we have heard absolutely nothing from you. I understand you knew about this problem before we discovered it on the

American market."

So all he is saying is: "Look. You made all these promises. Let's get together. If you will fill them, I will pay you."

He couldn't sell from his inventory. The six percent allowance they offered was ridiculous. Of course, he described that he is having thousands of returns. The offer to repair was just as bad because what did they want him to do, they wanted him to sell second rate goods, goods that didn't work, you stick a piece of plastic in it and hope that that works and nobody really knew at that time whether it would or not.

Well, of course, what resulted from all this was the cancellation of Mr. Garrity's exclusive on January 25th when Mr. Courtecuisse wrote him that Piles Wonder was going into business for itself in the United States.

We heard two reasons given for that cancellation for that letter here at the trial. The first reason was that Mr. Garrity has not paid invoices that were outstanding. Of course, he hadn't. They knew that and they knew the reason for it. They knew he paid them for five million flashlights over the past four years, and there was a dispute going on that they had made promises and they were not fulfilled.

The second reason given was that Mr. Garrity had purchased some batteries from a competitor of Piles Wonder, and that is an interesting story in itself. He testified that when he put out his new flashlight, the Mark IV, he bought fifty batteries from Piles Wonder, tested them out, found them perfectly satisfactory, then placed an order which was fulfilled in August of 1972 for one hundred eight thousand batteries, and that is what he was using in his new flashlight.

Then in December he needed more and he ordered two hundred thousand more batteries from Piles Wonder, and they refused to sell it to him. Well, he was buying those batteries and paying for them. There is no claim here that there is any invoice outstanding for batteries. The dispute between these parties was over the flashlights, but they refused to sell him those batteries, and it was for that reason he ended back in 1972 that he turned to another source for batteries.

Here's two reasons for cutting the man off, both of which relate to their own failure to keep their promises, failure to sell them.

I think it is just as clear that Garrity Industries has suffered substantial damages as a result of Piles Wonder's defects, their defective goods, and I would like to review those with you.

First of all, there is no question that there are unpaid invoices here and that should be credited over to the defendant. We don't dispute that. We never have. I think his Honor will tell you that the total amount comes to approximately one hundred thirty-six thousand dollars -- a few dollars less than that, but I am willing to round it off at one hundred thirty-six thousand dollars. The issue in this case is: What does Piles Wonder owe to Garrity? That is why we are here.

Now, the first step on that is the credit that Garrity is entitled to on the purchase price against that one hundred thirty-six thousand, plus his costs to get the flashlights over here, and that was stipulated during the trial to be forty-one cents, the cost to land

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those flashlights in Stamford, Connecticut from France.

So the question now is: How many of those units are we talking about? Well, Mr. Chymeryz testified, and this was stipulated by counsel, that Garrity Industries has returned to Piles Wonder one hundred seventy-eight thousand nine hundred fifty-four defective flashlights. Mr. Coppola came and testified, the Traffic Manager of Garrity Industries, that since the last delivery back to Piles Wonder, Garrity Industries has continued to receive returns from its customers and now has on hand twelve thousand four hundred forty-one additional flashlights. So the total number of defective flashlights at issue in this case is one hundred ninety-one thousand three hundred ninety-five.

Now, Piles Wonder wants to reduce that number, of course, and they claim that the defectives were only produced in May and June of 1972 and, therefore, it could only have been included in the shipment in July. So that their position is, well, we will take everything back in 1972, but anything before 1972 couldn't possibly have been defective and, therefore, you are not entitled to credit for it.

Well, let's just look at that theory. First of all, the number of pre-1972 units which Mr. Sternlicht rounded off to forty thousand was thirty-one thousand three hundred fifty-three. That's all they're talking about. But even as to those, we have Mr. Courtecuisse in his deposition admitting that he knew of the defect in May and June. Then he went on to say that "Well, you can't know about a defect until the product has been out in the hands of your customers and consumers get a chance to find out that it is defective and start complaining." Well, that testimony right there proves that these defective units were being made well before May and June, 1972.

We heard from Mr. Bertin's deposition that those defects were caused by a foreman in the factory or somebody using some plastic that he shouldn't have, and we don't know when he did that. We don't know how long he was doing that. The idea that only the July shipments were defective is preposterous. There were one hundred eight thousand flashlights in those July shipments and even Piles Wonder's own figures showed that there is over one hundred thousand, one hundred forty thousand defective units that we have returned to them, and we know from our own experience that there must have been many thousands more in the hands of consumers who just became disgusted with this product and threw it away.

Moreover, you recall at the end of the trial we produced two flashlights that were a part of the inventory that had been returned to Garrity Industries that are now on hand, the twelve thousand. One we had Mr. Sternlicht identify it with this code that we finally learned about at the trial as being made in late 1971, the other in January, 1972. Mr. Sternlicht and Mr. Garrity both agreed that they both had defective switches and the defect was the same kind of defect as far as you could tell that occurred with the switches back in 1972.

So here are two flashlights made months before this May and June period that had the same defect. Of course, Mr. Garrity was never told of this code, so there was no way for him to find out when they were made. He simply returned the defectives that came into him back to Piles Wonder.

Finally, on this point, let me just ask this question: How else is Garrity Industries to receive credit for defective goods, regardless of when they are made? I asked Mr. Bertin and I asked Mr. Sternlicht, what is your company's policy on defective goods? You don't expect people to pay for goods that are no good, do you? And neither one of them could identify a policy.

It is perfectly clear to me that the only remedy that Garrity Industries has is right here with you gentlemen in this courtroom. And that being the case, Mr. Sternlicht testified that when he appeared in Mr. Garrity's office back in September of 1972, that Piles Wonder was ready to stand behind his product. I think it is time they stood behind their product right now and honored all of these defectives, one hundred ninety-one thousand of them and that number, one hundred ninety-one thousand three hundred ninety-five times forty-one cents is seventy-eight thousand four hundred seventy-one dollars ninety-five cents.

Now, Garrity Industries had other substantial losses coming in the form of lost profits, losses that they had, money they had to give back to their customers, goods they weren't able to sell.

You have to do a little different calculation on two categories here. I would like to explain them to you. First, the units that came back from their customers. Now, these were originally completed transactions. Garrity took flashlights, sold them to its customers who paid eighty-one cents for each one of those flashlights. Out of that eighty-one cents they paid a salesman's commission, paid for the shipping, paid for its rent, telephone, taxes, all its other expenses. But then when the goods turned out to be defective and they were sent back to Garrity Industries, they had to give the eighty-one cents back. They paid all those expenses, they got nothing in return. So out of that eighty-one cents I just covered forty-one cents of that is landed cost. We are left with forty cents Garrity had to hand back and got nothing for it. That forty cents on those returns from his customers represents Garrity's damages on those returns. There were one hundred eight thousand three hundred seventy-three returns according to Mr. Chymeryz in his testimony, times forty cents is the figure of forty-three thousand three hundred forty-nine dollars twenty cents.

Now, the second category here is the defectives that were still left in inventory when it became obvious that even the inventory was contaminated with the defectives and could no longer be sold. There were eighty-three thousand twenty-two of them left in the inventory and these were shipped back to Piles Wonder. Now, on those, they were never sold. So that there was a savings of some expenses because they weren't sold, which we can go through.

First of all, the selling price again was eighty-one cents. We have already covered forty-one cents of that. So we are left again with a forty-cent figure, but there were two items of expense that Garrity Industries didn't have to pay because it didn't actually sell those units out of its inventory, the first being commissions to its salesmen, four and a half cents; the second being the shipping charges of two and a half cents which totals seven cents and reduced the losses on the inventory units down to thirty-three cents per unit.

So again, that calculation, eighty-three thousand twenty-two units times thirty-three cents comes out to twenty-seven thousand three hundred ninety-seven dollars twenty-six cents.

Now, there were a series of incidental expenses incurred by Garrity Industries, all directly as a result of Piles Wonder selling it defective goods. First of all, it had to pay the shipping charges when the goods came back from its customers. Sometime a credit was taken on an open invoice, sometimes a check had to be written out. Sometimes the freight came in unpaid. Those numbers were all given to you by Mr. Chymaryz, and that particular shipping charge number was twenty-seven hundred nine dollars. There were storage charges to store the defective goods, and we made that calculation for you, and I will tell you right now, I think we made a little mistake. I am going to reduce that because of it. You recall we calculated that by taking the square footage of the warehouse where the goods were stored and we knew how many boxes there were and two by two boxes take up two square feet, and we knew the number of boxes, we were able to calculate the number of square feet we used, and we know how much is paid per square foot under the lease, and we came out with a figure of twenty-seven hundred two dollars ninety cents, and you recall that the court asked the question and I made the comment that, well, we are only charging them for the bottom of the box. I think that is wrong. Obviously, they must have been stacked up four or five high. I want to take that twenty-seven hundred two dollars and just divide it by five. I will assume they were stacked five high and reduce that figure down to five hundred forty-one dollars.

All right. There was labor for inspection. One man spent forty hours one week, another man spent some more time. Those were all invoiced and the figures are there and the calculations were put into evidence, documented, and total nine hundred sixty-three dollars. There were shipping charges to go back to Piles Wonder. Those again are in the exhibits. The actual invoices and how much they paid or the calculation of the man's time, two hundred five dollars.

There were unused materials, advertising materials that could not be used. Those are all there, even samples of some of them. Six thousand one hundred five-two dollars.

The total of those five items of incidental expenses is ten thousand five hundred seventy dollars. So let me summarize this for you now, and to simply round off some of these numbers, and I think sometimes it rounds up slightly, sometimes down. It is going to come out with the same. The credits on the returns, the forty-one cents, seventy-eight thousand five hundred dollars. The returns from customers, the lost profits, forty-three thousand three hundred fifty dollars. The inventory lost profits, the ones we could not sell, twenty-seven thousand four hundred dollars, and the incidental expenses I just gave you of ten thousand five seventy. We will call that ten thousand five hundred dollars. The total of those four figures, seventy-eight thousand, forty-three thousand, twenty-seven thousand, ten thousand comes up to one hundred five-nine thousand seven hundred fifty dollars.

Now, as I said, there was one hundred thirty-six thousand dollars owed to the defendant. We don't dispute that. We never have. So the difference between those two amounts is twenty-three thousand seven hundred fifty dollars, subtracting one hundred thirty-six owed the defendants from the one hundred five-nine thousand seven hundred fifty damages that Garrity Industries has suffered, the difference is twenty-three thousand seven hundred fifty dollars.

Gentlemen of the jury, I ask you to return a verdict for Garrity Industries in the amount of twenty-three thousand seven hundred fifty dollars.

THE COURT: Mr. Foley, please.

MR. FOLEY: Gentlemen, I too thank you as Mr. Wentzel did, for your patience for doing your duty. We don't really try the case without you, and I am grateful.

Now, I think to simplify this, since essentially, Mr. Wentzel stated the facts, he put his own version and construction on them, but essentially, he stated them, I would just like to point out a couple of things that he said that maybe the characterization was exaggerated.

We did not make and we do not use at Piles Wonder what we regard as inferior scrap plastic. I think it is known that scrap is recycled and it is good business judgment to do that, and there is a regular mixture of plastic, new plastic and scrap plastic. We did not believe it was inferior, but the mixture turned out to be inappropriate, so it rendered inferior. It was not our intent to use that type of thing.

Now, one other thing that is interesting. He seems to think there is something sinister about our recalling the Luebox lights from Europe which were defective, but not recalling his. Instead, offered to repair his here, but you heard Mr. Bertin say there was some significance in that it is very expensive to have the lights shipped back from the United States all the way to France, whereas the lights in Europe were relatively close, Belgium, Germany. It's like going to New Jersey over there. It's a big problem here. They have to be reshipped, and that is the only reason that Garrity's lights were not recalled. Mr. Bertin testified to that.

Now then, the story about the delay in letting Garrity know this and that. Mr. Bertin testified that they first found out about complaints about the lights at the end of June, back came complaints. Mr. Bertin also said that at that time they did not think that Garrity had any of the defectives. They subsequently learned he did when the letter of August 25, 1972 was directed to Mr. Courtecuisse. We had a rash of complaints. Mr. Bertin was in the United States at that time, and he and Sternlicht went up and saw Mr. Garrity. But it takes time to iron out these things. You hear about complaints, you are not sure where they are coming from, what is the problem. The factory was on vacation in June. You have to get engineers to figure it out. It's not something the salesmen looking at and say what the trouble is. You had to identify the batches. They have tremendous production in that place. Actually, I think that batteries are eighty-five percent of their work at the Piles Wonder. That is what Piles means, by the way, battery. And that is their job, and you just don't turn your attention and get it all ironed out. They did the best they could and they were reasonable in their efforts.

Now, we have here a big factor, the amount of credits, the forty-one cents that is due on how many returns. Now, there is no question we offered them the forty-one cents and they have got the forty-one cents on every legitimate light return. But the deal was to return 1972 lights. We didn't say we would take back everything they had around the place. I don't think it is proper for anyone to find some old junk around and take it back and say "It's no good. Give me a credit." We didn't agree to anything like that. We agreed to the return of 1972 lights. That is where the defective batch was, among the '72 lights, and that is all we agreed upon.

Now, there has been testimony here that there were returned one hundred seventy-eight thousand nine hundred fifty-four lights. We stipulated that is what came back. And they have twelve thousand lights which they want to hand over to us now. Why should we take twelve thousand lights now? Why should we take them after all this time? And the question is: Where did they come from? Now, I will go over that in detail in a moment. Maybe I will do that right now.

Now, of one hundred seventy-eight thousand returned, you saw that Mr. Sternlicht identified the code which had been marked by the Germac man who counted these when the first batch were shipped back. There were identifiably on those documents thirty-one thousand that were non-1972 lights. Some of them were way back in 1967. Why should we give them credit on thirty-one thousand lights that had nothing to do with 1972 and really had no relation to the whole subject matter of the controversy? They want us to pay them forty cents apiece on those. Why should we? It's certainly unjust.

Now, they also eighty-three thousand in inventory which had never been opened. They shipped those all back to us. We are offering them a credit of forty-one cents on those and they are entitled to those, but they should never get back any kind of credit on thirty-one thousand which were proven here as not having been 1972. That is what you call a ripoff. That's all it is. And you must remember, and this is particularly applicable to the twelve thousand he wants to hand us now, in January of

1973, he said he sent out this notice: "Because quality of product has deteriorated from our supplier in France, we are taking this product off sale."

The product had only deteriorated in one batch. He had sold almost five million of these. They were always good and they're still making good lights. How can he say the product has deteriorated? This is part of the thing that made Wonder and Piles Wonder decide to resume selling the Luebox in the United States. This went around to Garrity's sales personnel: "Now, it has always been the intent of your company to bring the finest quality and most up-to-date product to market. Old Dispoz-A-Lamp fits neither these objectives. Its ideal replacement is the Mark IV and most distributors have changed their orders."

He started selling this in September of 1972. Do you remember that the letter that was directed to Mr. Courtecuisse was August '72 and said he had a rash of complaints. He had his new one ready to go, and that is how we get all these old returns. He said "Send them back." There is no way that he wanted a Dispoz-A-Lamp made by Piles Wonder in any inventory of any of the salesmen, regional managers, reps, or any customers. He wanted to get them out of there. "Ship them back and you will get forty-one cents apiece from us." That's his whole idea.

Well, there is no way that he should be allowed to send us one hundred ninety some thousand back and expect forty-one cents apiece. We will agree that of the one hundred seventy-eight thousand returned, deduct thirty-one thousand for non-1972, eighty-three thousand were enclosed boxes, were inventory, and fifty-seven thousand came back from customers. That makes up the difference.

Now, here is a serious question. How many of the fifty thousand that came back came back pursuant to the dollar guarantee that you saw on the Garrity label? How many? All during this case we pursued the question of how many were returned pursuant to the guarantee? No record whatsoever. When Mr. Chymeryz took the stand, yes, he said there were some and Mr. Coppola said he saw these traffic tickets among the batch which he tried to identify, which indicated a dollar had been sent back. Now, how many of the fifty-seven thousand that are left came back that way? There is no way we will ever know, but he is going to stick us for forty-one cents on every one of them, if he can. It is totally unjust, never proven, any records about it, and now he wants us to pay it. If he got a dollar on every one of them now, he is getting a dollar forty-one for every one and he is getting paid twice. So I think you should take into consideration that the maximum number that the credits should be given on is no more than one hundred thirty thousand lights. We will give credit on one hundred thirty thousand lights and be done with it.

THE COURT: I don't understand that too well, Mr. Foley, please. If one hundred seventy-eight thousand --

MR. FOLEY: Well, your Honor, it does not come into mathematics exactly. I am trying to find some way that we can get some benefit from that dollar, that some of these came in pursuant to a dollar.

THE COURT: You say one hundred thirty thousand?

MR. FOLEY: One hundred thirty thousand I would agree on, your Honor, that we would give the credit on.

THE COURT: Thank you.

MR. FOLEY: Truly, I cannot say how many of the fifty-seven thousand should be given credit on or not, but he did get a dollar on many of these. There is no question about it.

Now, as I said, there is no question here that we sold them all these lights, four hundred eighty-one thousand lights between March and July of 1972, and there is no question he didn't pay for it. You will recall in July of '72 he wrote a letter that was Defendant's Exhibit A. Garrity wrote a letter to Courtecuisse and said he had more than five hundred thousand lights in inventory. Well, he sold and got paid for more than three hundred thousand of those lights. I am using that as a round figure. It had to be for more than that. It depends upon the number of '72's he returned. Now, we offered to give him the credit and he has got the credit. There is no question that he has the credit and the jury is entitled to award him forty-one cents on whatever it finds as a '72 return, and each forty-one cents represents twenty-two cents which would be the cost of the light to us plus nineteen which Mr. Garrity paid to get them over here. We never got the nineteen cents for the product. We get twenty-two cents. He says "Oh, we have to pay out nineteen cents and we lost the product." That is the total of forty-one cents. But what is Garrity Industries looking for? He is looking for a profit, a profit of forty cents in addition to the forty-one cents on every light. That would make a total of eighty-one cents allowance on each light returned regardless of the year of manufacture, whether they came from his inventory or came back from customers, wherever there was a return based upon his dollar guarantee, he wants it on the whole batch.

Now, figure this: He identifies almost -- I have taken a round figure, two hundred thousand lights. It's one hundred ninety some thousand that he wants to return. Eighty-one cents a light he wants on those, which would make one hundred sixty-two thousand, plus he wants incidental charges. You have heard that. That would represent on the one hundred sixty-two thousand a profit of eighty-one thousand.

Consider this: Piles Wonder over the years sold him five million lights. If you take the average of twenty-two cents a light, we got one million one hundred thousand for those. Now, I don't know what the Piles Wonder's profit margin is or what its net profit is, but if it is anything like Mr. Garrity's eight percent, they only netted eighty-eight thousand on the whole deal. Now, we are expected to give eighty-two thousand of it back for only a part of the five million four hundred thousand. In other words, he wants profits on our five million lights. Think of it that way. Where is the justice in that?

Now, is Garrity entitled to profits? The answer is "no", I believe. Now, it is not my function to tell you what the law is, but I think that I can say what I think is common sense. If a reasonable man finds that someone else has caused him harm, does that reasonable man do anything about it himself to try to lessen the harm, to mitigate it? Let's assume you saw your neighbor's hose running and it was going into your cellar. Would you turn the hose off or would you say "I am counting on that guy to pay me every dime. Let the water get up to the roof." No. You turn the hose off and Garrity had many opportunities here to avoid and lessen any damages that he is claiming. Now, did he act like a reasonable man? Some ways he did and some ways he didn't.

First, I think I will tell you that I don't think he ever lost a dime of profit. He never lost anything. But if he did, he has himself to blame.

Now, he would not accept the repairs. Why would he not accept the repairs? After all, he saw the yellow light there. It had a little ridge on the top after it had been repaired. That wasn't on the track. Who possibly would notice that? You know these things aren't Cadillacs. You don't buy them at Tiffany's so they have to be so beautiful. They were put out by a good company, by Piles Wonder, redistributed all over France, and there was not any complaint about them. He had an opportunity to have all his lights repaired and it would cut his damage right there. Shouldn't he have cooperated a little bit with us to help cut our damage? He just said "No. I am sticking you for forty cents." Was he reasonable in doing that? Those lights are not bad looking. You saw them. No trouble with them whatsoever, and we resold them. Piles Wonder does not put out shoddy products, believe me. It competes with EverReady and some of the biggest battery companies in the world. It does not want any shoddy products on the market. It is more embarrassed about its products than Mr. Garrity because the Garrity lighter was well known to be a French product. He advertised it when it first came out that they came from France.

Now, another thing, why didn't he pay his bills? After all, among the invoices there were three bills that were dated March 30th. They were due July 30th, a month before he wrote the letter. Why hadn't he paid them? He didn't pay, and that is the big problem he had. They were just turning this guy off because he didn't pay. Had he paid, he would have gotten new lights out of us. We had a decent relationship. Mr. Bertin said that on the stand. We would have sold him more lights. Why not? He would still be in the business of selling our lights if he was a good payer, but he was not. However, I think what is more important here, and I think you are going to see that he didn't lose anything. You remember he testified himself, Mr. Garrity, that as these came back, he was replacing the lights from inventory. He had a lot of good inventory there. After all, the only defectives were in the ones that came in July, July 2nd. One hundred eighty thousand was the only ones that could possibly have been defective. Yet he said in July he had five hundred thousand in inventory. Four hundred thousand of them were good lights, and he knew it, and he replaced good lights whenever any defectives came back. He had the inventory to do it, and he did it. But now his Mark IV was getting in the picture. As I said, in September, he introduced his Mark IV. That is the green one with the handle. He said, and I am reading from the second paragraph, "Mark IV is the ideal replacement." If it is the ideal replacement, what does that do to the Dispoz-A-Lamp, Luebox Dispoz-A-Lamp that are out among the salesmen? He gets them right off the market. He certainly didn't want to be identified. "And most distributors have changed their orders." He already had them in the field. Could he sell both at once, Luebox and Dispoz-A-Lamp, and Mark IV? They compete against each other and they still do right now. They're competitors. He did not miss an order. He had the ability and he did substitute every kind of returned flashlight, defectives, inventory, whether bad or not. And by the early part of 1973, the Mark IV was the highest selling light in the whole country. He advertised it. He beat the Dispoz-A-Lamp by a mile, and he sold more Mark IV's within the next year than he ever sold Dispoz-A-Lamp, and he is still doing it, my friends. He didn't lose anything. He got rid of us and has profited by it.

Now, remember, it was an ideal replacement. He had an ideal replacement, so what did he lose?

Now, I have one other little claim here which I will discuss. You recall that there had been a practice here of building up inventory. It was encouraged by Mr. Garrity pursuant to his orders. He would Telex his orders and we tried to have inventory on hand. They knew that practice and expected it. However, in the fall we had two hundred eleven thousand lights in inventory. We weren't sure whether all of them came from the defective batch or not. So we repaired them all. Well, he wouldn't take any repaired lights. He would not take them. So we were going to do either of two things, try to save ourselves a few bucks or just throw the lights away. But what we did, we removed his name, his identification as you know is on every light. We had to remove it from two hundred sixteen lights, repaired them and shipped them out. That cost us money. That cost sixteen thousand dollars to remove his name from all those lights. Had he taken them, there would be no problem with that. And we hope to recover that.

Now, we also had made up these packages, the packages with the Garrity display. It sets in a little pocket and all the Garrity information is all over it. We had paid and made up that stuff. There was ninety-four hundred dollars worth. We threw that all away. It wasn't good for anything when the parties disagreed. So we are entitled to that.

Now, as to the verdict, I think your verdict should be, gentlemen, the amount of money that is owed on the invoices, some one hundred thirty some thousand dollars, one hundred thirty-four thousand eight hundred thirty-four is the figure I have.

THE COURT: I didn't hear you, sir.

MR. FOLEY: One hundred thirty-four thousand eight hundred thirty-four dollars is the figure I have, your Honor.

THE COURT: As a credit?

MR. FOLEY: No. That is the amount of the invoices. I think it would be reasonable to give a credit of one hundred thirty thousand lights which would be -- let me figure that out, your Honor.

I believe that is fifty-three thousand dollars, your Honor.

THE COURT: Fifty-three thousand three hundred dollars, I guess.

MR. FOLEY: That's right. Fifty-three thousand. And I believe that we are also entitled to a non-disputed item where there was an underpayment based upon an erroneous exchange rate of twenty-five hundred ten dollars seventy-eight cents, plus twenty-five thousand dollars which is based upon the erasure of the guarantee name off all the two hundred eleven thousand in inventory, and return of the money we paid for the printing and making up his packaging which was totally worthless and which we had to destroy.

I do not believe that Mr. Garrity lost any profits because he had the ability to replace any sales with his own Mark IV, which he did, and also from inventory of Dispoz-A-Lamps, four hundred thousand of which were still good in July and which he had on hand. Or else he had the ability to get lights from us by paying his bills or accepting the repairs.

Now, it is total injustice to impose upon Piles Wonder an amount of money that almost equals what it made on the five million dollars over all the transactions since 1968, based upon what Garrity's net profit is.

Thank you very much.

THE COURT: Mr. Wentzel, please.

MR. WENTZEL: Gentlemen, I just would like to address myself to some of the things that Mr. Foley mentioned, and I will conclude.

Mr. Foley takes the position or the defendant takes the position that Garrity Industries should not be entitled to lost profits because it did not try to cut or mitigate its damages, the phrase that lawyers use. He mentioned several ways that could have been done. I think we have to go back to the facts.

First of all, he talks about repairs. Well, you have to remember here that Piles Wonder never offered to repair for Garrity Industries the defective goods that were coming back from Garrity's customers until December, 1972, after they had failed to reship the replacements that they had promised and newly produced they had promised, failed to give the credit all the way down to December when Garrity already lost all the Christmas business. Then they come around and say "Oh, well, now we will repair."

Secondly, Mr. Garrity after all is a businessman who is selling a product under his own label, Dispoz-A-Lamp. That is his label. He owns it. His own name is on there, Garrity Industries, Stamford, Connecticut. He testified before you he doesn't want to sell repaired goods, and I don't think he should have to. I wish more businessmen took that position. To me, suggesting that he should send out a piece of merchandise, a flashlight that has been defective and then repaired and represent it to the world as if it was a brand new first quality good, would be deception and he doesn't want to engage in that kind of a business. It is no different than if you try to buy an automobile from someone, expecting a brand new automobile right out of the factory and you learn six months later that you have a rebuilt engine in it. Would you think that was just as good if you were given an assurance that the rebuilt engine was just as good as the first one? Of course not. You are entitled when you buy something new to get something new.

Mr. Foley says, well, who is going to notice this ridge left on there? The consumer will never notice that. Maybe they would or wouldn't. Garrity's customers would notice it, the retailers and distributors who handle thousands of those flashlights. They would know that he was sending out secondrate goods and that they were paying firstrate prices. They would know it.

I say to you, gentlemen, that Garrity Industries was not obligated to risk its reputation and its trade name on secondrate repaired goods. I say also that even if it were so required, they were never offered until it was far too late.

Now, of course, as far as replacing from inventory, we tried that. We thought they might be good. It turned out they were not. He had to stop. He couldn't continue to send out defective goods knowing they were defective, so he stopped.

That brings us to the Mark IV which Piles Wonder suggests, well, we could use the Mark IV for all of these defective goods, and Mr. Foley pointed you to the January 26th, 1973 letter to salesmen. He says that is the reason why Piles Wonder cut off Mr. Garrity, because he was going around replacing our goods. Look at that. Sure, that letter was written the day after he got Mr. Courtecuisse's letter cutting him off. That's when it was written. That wasn't the cause of the letter that he got the day before. And what about the Mark IV? They're different models, different price range. Mr. Garrity expected to use a two-dollar flashlight to replace a dollar seventy-nine flashlight?

Secondly, we have heard in the testimony he only had one hundred thousand of those Mark IV's and they were selling. It was a different line, a different price, a different model, and it is the same thing that Piles Wonder was doing. They had The Smart, the Rally and the Luebox which is the Dispoz-A-Lamp that Garrity was selling. They had three in their line. Mr. Garrity wanted two in his line. It was simply a different flashlight. It is not contended and was not a replacement for the Dispoz-A-Lamp at a different price. If it was, I don't think Mr. Garrity ever would have ordered another two hundred thousand flashlights from Piles Wonder in December of 1972.

The last thing Mr. Foley says is the way we could have lessened our damages is to purchase from Piles Wonder. Well, the record certainly in this case shows we tried. Mr. Garrity wrote letter after letter. He got promise after promise and none of those promises were kept. He tried to buy from Piles Wonder. You heard about those two hundred sixteen thousand flashlights that Piles Wonder had on hand with his label on them. Those were second goods, second-rate goods. They were seconds. They had to be repaired before they could be sent to him. Not only that, the key thing here is that they hadn't even been repaired. Mr. Bertin admitted that right then to the end of 1972 Piles Wonder did not have a single flashlight to send to Mr. Garrity even though he had promised. Not a one, not a repaired one, not a new one, nothing. All they were doing was making their own product at that point so they could go into business for themselves.

Now, let me just address this counterclaim, this additional claim here of twenty-five thousand dollars. I am not sure where those numbers came from. Let me address myself to it. First of all, we heard that it cost a dime to scrap a name off a flashlight, ten cents apiece. Where are the records to show that? Where is the documentation? Where is the equivalent of Mr. Coppola who came in here and testified with personal knowledge of what it cost? Who got out the documents and the records and produced them here in court? Where is that? We heard Mr. Bertin say it cost a dime. How do we know that? Why does it cost a dime to sand off a name off a flashlight when it only cost twenty-two cents to produce, to manufacture the entire light? What part of that money was labor? What part was machinery? What was the dime made up of? None of this is explained to us. We don't know. What part of that money was spent repairing the flashlight so that Piles Wonder could go off and sell it at a profit rather than just a small portion of sanding off the name? Piles Wonder sold those entire two hundred sixteen thousand flashlights at its regular selling price on the European market. Mr. Garrity wouldn't have done that, but it didn't bother them, and they made their profit on those flashlights. They were defective flashlights. There is no way in the world that Garrity Industries was required to buy those when it expected and was promised first quality, newly produced flashlights. There is no obligation to Garrity Industries here as a businessman to pay for Piles Wonder's mistake, and that is what he is being asked to do on that claim.

As far as the rest of this other nine thousand dollars, I didn't really hear any evidence of that. I admit I did not, but it relates to the same thing. These were repaired defective goods. Garrity Industries isn't obligated to pay for defective goods.

Now, let me just cover one other item, and that is the business of the dollar guarantee. Mr. Chymarys testified they couldn't find any records indicating a dollar guarantee. He said they probably had some because this guarantee appeared on the blister pack, but it's not involved in this case and there is a very simple reason why. The defective goods here, flashlights sold to Garrity Industries in 1972 were not sold in blister packs. None of them carried that guarantee. I asked that of Mr. Bertin. He looked through every one of those invoices. Not a one. They were all sold in twelve packs, display packs of twelve each, and that doesn't carry that guarantee. That dollar is not part of this case. There was no dollar to begin with.

I think we have to address ourselves here to the question of why some of these things happened in 1972 because part of your job is to determine whether these two companies acted as reasonable men. Why didn't Piles Wonder tell Garrity of this defect? Why did they send shipments a month after the defect was known? Why didn't they say anything all during the summer? Why did they protect their own label with the recall? And you know my point about that recall was not that it was easier to do it in Europe than it was in the United States. My point is this: When they did it, they recalled their own product with their own label immediately in August of 1972 and didn't say a word to Garrity when he is selling the same product but under his label. Why did they promise him replacements when there were none? The issue in this case is not whether Garrity is a dead beat. We proved he was not a person that doesn't pay his bills by paying for five million of these flashlights in prior years and by paying for the batteries ordered right during the same period of time.

What the evidence points to here is an intentional deception so that Garrity's business would be destroyed and Piles Wonder would take it over. I say the evidence points there. Is it clearly proven? Well, you know, one big gap in this case that has not been solved is what Mr. Courtecuisse was thinking when some of these things happened. Mr. Courtecuisse knew about the defect. Why didn't he tell Paul Garrity? Mr. Courtecuisse knew about the promise to give Garrity Industries full credit. Why did he renege on that and say "No. You've got to pay your bills first, then you only get six percent." Why didn't Mr. Courtecuisse order his factory to start producing new flashlights for Garrity Industries so it could replace all those defectives? Why and when did Mr. Courtecuisse decide to enter the market for himself? None of those questions have been answered. The only reason they are not answered is because Mr. Courtecuisse didn't come here to testify. Now, he sent Mr. Bertin over here from France and Mr. Bertin was a good soldier. He tried his best for his company, but he was mistaken on some things or else he wasn't closely enough involved in the decisions to know. We do know that Mr. Courtecuisse knew about that defect in plenty of time to avoid all Garrity's losses, and he did nothing. He didn't come over here and testify he was mistaken when he knew about the defect back in May and June. That stands on the record. So we don't have his testimony. He didn't come here to testify and get up on that witness stand as Paul Garrity did and tell you what the story was. All we can do is judge his actions by what we know he did. We do know he manufactured no Garrity label lights, which to me, shows that he never intended to give Garrity any further supply. We do know that he cut Garrity off and tried to grab that market for himself after Garrity had built it up into a million-dollar business.

Let me just say this in closing. I think the testimony you have heard demonstrates that Paul Garrity throughout this case, throughout all the period of time involved here in 1972, was open and fair with Piles Wonder. From the outset, he was deceived. Piles Wonder caused the defect, not Garrity Industries. Piles Wonder took advantage of it and destroyed Garrity's Dispoz-A-Lamp business. Perhaps that is the way businessmen operate in France, but in this country, a man has a right to carry on his business and make a profit from that business, and if that right is interfered with, he has a right to seek his damages in court.

I ask you to help him recover those losses and return a verdict for the plaintiff in the amount of twenty-three thousand seven hundred fifty dollars.

Thank you.

MR. FOLEY: Your Honor, I would like to with your permission correct a few misstatements.

THE COURT: No, counsel. There is no way of doing that. The only way we have is the jury's recollection of what the facts are in the case. I am going to tell them that when I charge that it is not my recollection or yours or Mr. Wentzel's, but theirs exclusively. Whether some lawyer misstated the facts, we have no way of correcting now.

MR. FOLEY: Your Honor, I don't think there was anything in the record about business practices in France.

THE COURT: There might not be, but the question always is, Mr. Foley, what does the jury recall of what the record is and the testimony? Otherwise, we would never finish a lawsuit.

But gentlemen, the summations are finished now and what I am going to do is leave it up to you. The Marshal will go inside with you and take your order and go out and get you lunch or if you want, you can go out and get it yourself. It's cheaper one way than the other, but I will leave it up to you. What would be the concensus? Would you want to go out for an hour?

Most of the jurors want to. All right. Let's say we will return half past 1:00. It will be fifty-five minutes. So half past 1:00. Thank you.

(Court recessed at 12:35 p.m. and reconvened at 1:35 p.m.).

MR. FOLEY: Your Honor, I have an exhibit here, Defendant's Exhibit I. Apparently, it was not offered. It is marked for identification.

THE COURT: Are you offering it now?

MR. FOLEY: I will offer it, your Honor.

THE COURT: You better show it to counsel.

MR. FOLEY: He has seen it.

MR. WENTZEL: I object, your Honor, to offering it at this point in the case.

THE COURT: Sustained. Yes.

Gentlemen, I am certain that after hearing the testimony in this case, you will agree that we are now in the plastic age. We have gone through the cast iron, the steel, the aluminum, stainless steel. All those ages are behind us, and the plastic age is right on top of us. Although the plastic flashlights involved in this case were sold by the defendant, Piles Wonder, to the plaintiff, Garrity Industries, for twenty-two cents each F.O.B., which means Free On Board, Le Havre, France, this case involves thousands of dollars. In fact, we have been trying two cases and you will return two verdicts. This is not unusual in a civil case because where the subject matter relates to domestic or foreign commerce as distinguished from the typical automobile or accident case, there are usually two cases involved. The plaintiff, Garrity Industries, sues to recover approximately one hundred sixty odd thousand dollars damages which it claims it sustained as a result of defective flashlights it bought from the defendant, Piles Wonder. The lawyers call this type of a claim an action for breach of warranty.

I assume you know that certain defects in goods or merchandise are immediately apparent upon inspection. Other defects come to light only when the product is actually used. An automobile, for instance. In the present case, the defects occurred in the switch mechanism and could not be detected until the flashlights were used at one or more times. Garrity's claim for its damages in the sum as I have said of one hundred sixty thousand dollars is broken down into seventy-eight thousand five hundred dollars for credits on its return, for allegedly defective flashlights at forty-one cents per unit, ten thousand five hundred dollars for storage, inspection, freight charges and incidental expenses, and some seventy thousand odd dollars for lost profit on the defective units.

The defendant, Piles Wonder, admits that certain of the flashlights, particularly those delivered in May and June of 1972, were defective and that such defects were a breach of the warranty of fitness for a particular use.

The defendant has also filed claims against Garrity which lawyers call a counterclaim or counterclaims, totalling in the sum of approximately one hundred sixty-one thousand dollars. These damages are claimed to consist of one hundred thirty-three thousand four hundred forty-six dollars thirty-two cents, the amount that Garrity did not pay for the sale and delivery of some four hundred eighty-one thousand three hundred twenty-six flashlights it sold to it with the plaintiff's markings on them between March 30, 1972 and July 3rd, 1972.

It also claims that because of Garrity's mistake in the conversion of French franc into dollars in the payment of a prior bill, the defendant received two thousand five hundred ten dollars seventy-eight cents less than it should have if the conversion of francs into dollars was correct.

It also claims that it was damaged in the sum of some twenty-five thousand dollars by having to erase by mechanical means the trademark emblems on the flashlight ready for shipment and the destruction of the advertising material and packaging of flashlights for the plaintiff when the plaintiff went into business with his own flashlight.

From my recollection of the testimony -- and bear in mind it is not my recollection or is it the lawyers' recollection of the testimony that counts. It is your recollection and your recollection alone. But as I said, from my recollection, it appears that there is no dispute that the plaintiff, Garrity Industries, has not paid the defendant, Piles Wonder, for the flashlights sold and delivered to it during the period March through July of '72. On the other hand, there is no dispute that Piles Wonder breached the warranty of fitness for a particular use in delivering flashlights which had a defective switch. I believe also that the parties are in agreement as to how many flashlights were returned to the defendant, and if my recollection is correct, the total returned as of September 18, 1974, according to the testimony of the Controller, was one hundred ninety-one thousand three hundred ninety-five.

It was his testimony also, as I recall it, that there were still some fourteen thousand units in the plaintiff's warehouse, some of which he said were returned by Garrity's customers as defective.

The defendant, on the other hand, claims that the one hundred ninety-one thousand that were delivered consisted of some that were not part of the 1972 bad batch.

In any event, there appears to be no dispute that Piles Wonder agreed to credit the plaintiff with its landed costs of fourteen cents a unit for defective flashlights. Landed costs means, I'm sure you know, the sales price, the cost of transportation from Le Havre, insurance, United States duty and customs brokerage charges. That is adding nineteen cents to the cost of twenty-two cents makes forty-one cents the landed cost. And not only did the defendant, as I understand the testimony, agree to such a credit for the defective flashlights, it also offered to repair the defective units which offer was refused by Mr. Garrity.

What appears to be in dispute and awaits your resolution by your verdict is how many flashlights were defective and how many were physically returned to the defendant. Since this is a civil case, with regard to the plaintiff's claim, the plaintiff has the burden of proving by a fair preponderance of the evidence all of the claims it makes, and on the other hand, the defendant who is also suing on its counterclaim on it has the burden of persuading you by a fair preponderance of the credible evidence.

I am sure you know that if you try to think of a scale and put the evidence for and against, if the scale is evenly balanced, then the party that has the burden hasn't persuaded you because it is even. If you find that the scale tips ever so slightly in favor of the party on whom the burden is, that is enough. That is the preponderance of the credible evidence.

In a criminal case, the burden is on the Government to prove the defendant's guilt beyond a reasonable doubt. That type of proof is not involved here. It is merely a preponderance of the credible evidence, and if you just visualize a scale with the evidence pro and con, and if it tips ever so slightly in favor of the party who has the burden, then you can say he or she has proved its case. That being a civil case.

Now, since the defendant has admitted that a quantity of its flashlights were defective, I charge you that the sale of such defective merchandise is a breach of the defendant's warranty and that the flashlights were/not suitable for the purpose for which they were intended.

Accordingly, the plaintiff is entitled to receive a credit of forty-one cents for each of the defective flashlights it returned to the defendant.

It is agreed that one hundred seventy-eight thousand nine hundred five-one were returned and some fourteen thousand off are still in the warehouse and are not returned.

The defendants argue that of the one hundred seventy-eight thousand nine hundred five-one returned, some thirty-one odd thousand were pre-1972 flashlights.

Now, in addition to the credit of forty-one cents for each defective flashlight returned which Garrity claims amounts to roughly seventy-eight thousand five hundred dollars, I must tell you that when merchandise is sold to a buyer who is in the business of reselling such merchandise and the seller knows that and a defect causes a loss of profit on such resale, then such loss of profits is part of the buyer's damages.

Now, whether or no you find that the plaintiff is entitled to damages for its loss of profits, if any, you must consider the plaintiff's other claim, that is, its claim for incidental damages. Incidental damages resulting from the seller's breach of warranty include expenses reasonably incurred in the inspection and receipt, transportation, care and custody of the goods rightfully rejected by the buyer.

In connection with all forms of damages, the law of damages requires that the person who seeks damages has an obligation to mitigate or lessen his damages in every reasonable way. Accordingly, if you are persuaded that the defendant by a preponderance of the evidence has shown that the plaintiff could have reasonably presented a loss of profit on the defective flashlights by accepting the defendant's offer to repair such flashlights or by purchasing new flashlights from the defendant for cash, the plaintiff is not entitled to any lost profits on any of the flashlifhts sold and then returned as defective.

Now, in reference to the defendant's counterclaim, I direct you to return a verdict in its favor against the plaintiff in the sum of one hundred thirty-three thousand four hundred forty-six dollars thirty-two cents for flashlights sold and delivered to the plaintiff on March 30th and again on July 3rd, 1972.

I also direct you to return a verdict in defendant's favor and against the plaintiff in the sum of two thousand five hundred ten dollars seventy-eight cents, the amount of error by plaintiff in converting French francs into dollars on a prior invoice, all as outlined in Exhibit S.

With reference to the defendant's third counterclaim, you must determine whether defendant by a preponderance of evidence has persuaded you that it has sustained damages because of the plaintiff's action in not purchasing any more flashlights from the defendant in 1972 and thereby leaving the defendant with new flashlights from which it had to erase the plaintiff's trademark and also had to destroy advertising material and packaging it had on hand for the new flashlights.

Now, gentlemen, I prepared a written form of verdict, and I am going to read what I have written, and then I am going to ask you, if you wish, I am not telling you to, to make notes because I am going to refer to figures and it might help you if the Marshal will give a pad and pencil to everybody.

Now, as I said, I prepared this written form of verdict because of the various claims and the different amounts that have been discussed and testified to. Now, the first paragraph of your verdict reads: "We the jury find for the plaintiff, Garrity Industries, as directed by the court that it is entitled to a credit against the defendant of blank dollars for the return to the defendant of defective flashlights."

You will recall that during plaintiff counsel's summations, he suggested that the proof showed that the plaintiff was entitled to forty-one cents multiplied by one hundred ninety-one thousand three hundred ninety-five units which were returned he says or seventy-eight thousand five hundred dollars in round figures.

The defendant in his summation submitted that not all of the flashlights returned were of the 1972 vintage, and he suggested that your verdict should be in round figures thirty thousand dollars.

Am I quoting you correctly?

MR. FOLEY: One hundred thirty lights, your Honor, multiplied by forty-one.

THE COURT: Fifty-three thousand three hundred, I think. Was it?

MR. FOLEY: Yes, your Honor.

THE COURT: Only one hundred thirty flashlights times forty-one cents or fifty-three thousand three hundred dollars.

Now, the next alternate verdicts are: "We the jury further find that the plaintiff, Garrity Industries, is entitled to a verdict of blank dollars as damages for lost profits" or "We the jury find that the plaintiff, Garrity Industries, is not entitled to a verdict in any amount for lost profits."

Now, you recall that during summations counsel suggested to you, plaintiff did, that the lost profits were in rounded figures about seventy thousand dollars, and the defendant suggested that he was not entitled to any amount in dollars for any lost profits.

Now, the next alternate verdicts are: "We the jury find that the plaintiff, Garrity Industries, is entitled to a verdict of blank dollars for incidental damages."

You recall that during the summation of plaintiff's counsel, he suggested that the evidence showed that they were entitled to some ten thousand five hundred dollars, and defendant takes the opposite position and says that the evidence shows that they were entitled to no incidental damages.

And now with regard to the defendant's claims, I direct you, as I said to find a verdict for the defendant for one hundred thirty-three odd thousand dollars because it reads: "Now, we the jury find for the defendant, Societe Les Piles Wonder, as directed by the court that it is entitled to a verdict of one hundred thirty-three thousand four hundred forty-six dollars thirty-two cents against the plaintiff, Garrity Industries, Inc.

And the second paragraph says: "We the jury find as directed by the court that the defendant, Piles Wonder, is entitled to a verdict against the plaintiff, Garrity Industries, in the sum of two thousand five hundred ten dollars seventy-eight cents."

Now, the last are two alternatives. "We the jury find that the defendant, Piles Wonder, is entitled to a verdict for incidental damages in the sum of twenty-five thousand dollars against the plaintiff, Garrity Industries. I shouldn't say that. The amount in the form of verdict is blank. It says "We the jury find that Societe Les Piles Wonder is entitled to a verdict for incidental damages of blank dollars against the plaintiff." And you recall that it was suggested by defendant's counsel that the proof showed that they were entitled to twenty-five thousand dollars for their damages in erasing the marks and destroying the advertising and packaging material.

On the other hand, counsel for the plaintiff says that there was no such credible proof at all. So the alternate verdict is: "We the jury find that the defendant, Piles Wonder, is not entitled to a verdict for incidental damages against the plaintiff, Garrity Industries, Inc.

I will have the clerk give you this form of verdict. Give that to the foreman now, if you will.

THE CLERK: (Hands document to the Foreman.)

THE COURT: And I have to talk to the lawyers in your absence for just a minute, so we will do it in your absence. Will you come in, gentlemen?

(The following transpired in chambers.)

THE COURT: Gentlemen, just tell me whether you have exceptions or not. Mr. Foley, do you?

MR. FOLEY: I only have one exception, your Honor, your failure to charge that all reasonable efforts to mitigate damages would involve sale from inventory or replacement by --

THE COURT: Didn't I do that? It is written in my charge.

MR. FOLEY: You never charged that.

THE COURT: All right. I will do it.

MR. WENTZEL: I thought he did.

MR. DUNN: I thought so too.

THE COURT: I will look at it again, Mr. Foley.

MR. FOLEY: I think it was repair and replace sales, buying new ones. I didn't hear the Mark IV. I didn't hear --

THE COURT: No. I didn't put that in. That is true, yes. You have an exception as to that. But I did put in the two --

MR. FOLEY: About the repair and purchase.

THE COURT: Right. I did. But you have an exception for the other too.

MR. FOLEY: Thank you.

THE COURT: Mr. Wentzel.

MR. WENTZEL: No. I have no exceptions other than as you ruled on our formal written requests to charge, your Honor.

THE COURT: All right, gentlemen. And here is a copy of what I am giving the jury, the form of verdict. (Hands document to counsel.)

(The following transpired in open court before the jury.)

THE COURT: All right, gentlemen. Everything is all right. You may now go in and resolve all of these problems.

(The jury left the courtroom and court recessed at 1:50 p.m. and reconvened at 2:40 p.m.).

THE COURT: Gentlemen, I have a note. It reads: "Could we hear again the breakdown of the seventy-thousand-dollar figure pertaining to lost profits, plus the breakdown of the incidental portion?" And it is signed by -- I can't read it. It looks like Machowski, I guess. It was the man sitting in No. 1 spot. I have a feeling that the jury is referring to the summations, and if I'm right, they can't have that. But if they are referring to the testimony, then of course, we could try to find it for them and read it. Do you think differently?

MR. WENTZEL: I would think you are probably right, although finding it in the testimony might be a little difficult because it came in in different pieces.

THE COURT: Do you agree with me that I can't repeat what the lawyers said or have the court reporter read the summations?

MR. DUNN: The only thing I could proffer, your Honor, might be that the computation in your charge that seventy thousand dollars was the result of forty cents per unit or for the units that would have been defective. I don't know whether that is the figure that they would be confused on.

THE COURT: Mr. Foley, do you want to throw in your two cents?

MR. FOLEY: I am not sure, your Honor. I am confused as you are.

THE COURT: I suggest that I wrote a note saying: "It isn't too clear what you want. Does it refer to any part of the lawyers' summations or does it refer to some part of my charge when I was explaining the various paragraphs of the verdict or does it refer to the testimony of the witnesses?" Something like that.

MR. DUNN: Yes, your Honor.

THE COURT: Let me do that.

(Court recessed at 2:44 p.m. and reconvened at 2:50 p.m.).

THE COURT: Gentlemen, I typed up a note and it reads: "Gentlemen, it isn't too clear what you mean by your note. Do you mean that you wish to hear again that part of the summation that related to the item you mentioned or do you mean that you would like the court reporter to read the testimony that related to those items or do you mean that part of my charge in which I attempted to explain the issues that related to the written verdict that I handed you? Please advise."

Is that agreeable, gentlemen?

MR. WENTZEL: Yes, your Honor.

THE COURT: You better give them that. They might not remember what they wrote.

(Court recessed at 2:52 p.m. and reconvened at 2:55 p.m.).

THE COURT: Gentlemen, they have written or he has written on the bottom of my note: "We want the 'judge's' breakdown of the plaintiff's lost profits and incidental portion", it looks like. My recollection, gentlemen, is that I said after reading it -- and you have to lend me one of those verdicts. I gave one to the jury and one to each of you.

THE CLERK: (Hands document.)

THE COURT: After reading the two alternate verdicts relating to lost profits and incidental damages, I said "You will recall that the plaintiff argues that the proof shows that it is entitled to approximately seventy thousand dollars in lost profits and defendant says that he is entitled to no damages for lost profits."

And after reading the alternate verdicts with regard to incidental damages, I said: "My recollection is that the plaintiff has suggested that the proof shows that it is entitled to ten thousand five hundred dollars and defendant has submitted that he is entitled to no incidental damages."

I am almost certain I didn't break down the lost profits damages the way Mr. Wentzel did, but

but my note made at the time he was talking indicated that that seventy-thousand-dollar figure was made up of lost profits in the sum of forty-three thousand three hundred five-o dollars and lost profits of twenty-seven thousand four hundred dollars, but I forget now what the difference was between the two. But is it your recollection that I did not say that, I didn't break it down the way you did?

MR. WENTZEL: That is correct, your Honor, and those are the correct figures that I used.

THE COURT: Then what I should do is merely repeat what my notes indicate I told the jury. Are we agreed on that?

MR. WENTZEL: Fine, your Honor.

(The jury entered the courtroom at 3:00 p.m.).

THE COURT: Gentlemen, I have your note and your answer on the same note which you say: "We want the judge's breakdown of the plaintiff's lost profits and incidental portion." And I am assuming that what you want is when I started to explain the different paragraphs of the written verdict, and if that is what you want, I did something like this. I pointed out that there were two alternate verdicts with regard to lost profits and one said: "We the jury further find that the plaintiff, Garrity Industries, is entitled to a verdict of blank dollars as damages for lost profits", or the alternative, "We the jury find that the plaintiff, Garrity Industries, is not entitled to a verdict for any of the lost profits." And then the other two alternatives related to incidental damages in which I have it reading: "We the jury find that the plaintiff, Garrity Industries, is entitled to a verdict of blank dollars for incidental damages" or the alternative, "We the jury find the plaintiff, Garrity Industries, is not entitled to a verdict in any amount for incidental damages. And my notes indicate that what I said with regard to both of those two alternatives was: "You will recall that the plaintiff argues that the proof shows that it is entitled to approximately seventy thousand dollars in lost profits, and the defendants says that it is entitled to no damages for lost profits. And my recollection was that the plaintiff has suggested that the proof shows that it is entitled to ten thousand five hundred dollars, and the defendant has submitted that it is entitled to no incidental damages."

I hope that is what you want. If it isn't, you can send me another note. You may now retire again.

(Court recessed at 3:03 p.m. and reconvened at 4:07 p.m.).

THE COURT: All right, gentlemen. Thank you. Mr. Machowski, are you the Foreman?

FOREMAN MACHOWSKI: Yes, sir.

THE COURT: Have you agreed upon a verdict?

FOREMAN MACHOWSKI: Yes. We have.

THE COURT: Have you signed that paper?

FOREMAN MACHOWSKI: Yes, your Honor. (Hands document.)

THE COURT: Thank you. Gentlemen, listen to your verdict as it stands recorded. We the jury find for the plaintiff, Garrity Industries, as directed by the court, that is, it is entitled to a credit against the defendant of sixty-five thousand nine hundred dollars, returns to defendant of defective flashlights. We further find that the plaintiff, Garrity Industries, is entitled to a verdict of forty thousand dollars as damages for lost profits, and we find that the plaintiff, Garrity Industries, is entitled to nothing for incidental damages.

We the jury find for the defendant, Piles Wonder, as directed by the court that it is entitled to a verdict of one hundred thirty-three thousand four hundred forty-six point thirty-two against the plaintiff, Garrity Industries. We find as directed by the court the defendant, Piles Wonder, is entitled to a verdict against the plaintiff, Garrity Industries, Inc., in the sum of two thousand five hundred ten dollars seventy-eight cents.

We the jury find the defendant, Piles Wonder, is entitled to a verdict of nothing for incidental damages against the plaintiff, Garrity Industries. Signed by the Foreman, dated today.

Now, I started that out by saying "Listen to your verdict as it stands recorded", and as I read it, so say you all that that is your verdict?

(The jury responded affirmatively.)

THE COURT: Shall I poll the jury, gentlemen?

MR. FOLEY: No, your Honor.

MR. WENTZEL: No, your Honor.

THE COURT: All right, gentlemen. That is the last of my jury cases for the fall, I guess it is. I have one more case tomorrow involving the school here, and then I go to Arizona to try some cases. So I will think of you during the warm winter weather. Goodbye and thanks.

(At this time the jury left the courtroom.)

THE COURT: Gentlemen, the clerk is directed that she should enter a verdict in favor of the plaintiff for one hundred five thousand nine hundred dollars, and that should be credited against whatever the total is to the verdict in favor of the defendant of one hundred thirty-five thousand nine hundred five-seven dollars, leaving a balance due in favor of the defendant of thirty thousand fifty-seven dollars, if my figures are correct. And the defendant, however, is entitled to interest on one hundred thirty-three thousand four hundred forty-six dollars thirty-two cents at six percent from, I would think, October 1, 1972. I am adding three months. Weren't they three months at the end of the month business?

MR. FOLEY: Yes, your Honor.

THE COURT: So take three months from the last date, July 3rd.

MR. WENTZEL: I think it was four months, your Honor, one hundred twenty days.

MR. FOLEY: Yes. It was one hundred twenty days, your Honor.

THE COURT: One hundred twenty days from July 3rd. Put it that way, although there should be from each date -- there is no way of knowing.

MR. WENTZEL: It would be from the end of July.

THE COURT: You compute one hundred twenty days from the end of July?

MR. WENTZEL: Yes. One hundred twenty days EOM, end of month.

THE COURT: From December 1st, 1972 to the date of payment. Gentlemen, are there any motions addressed to the verdict? Mr. Wentzel? Did you say no or yes?

MR. WENTZEL: No, your Honor.

THE COURT: Mr. Foley.

MR. FOLEY: I have one motion, your Honor. I move to set aside as contrary to the evidence and to the weight of the evidence that portion of the verdict which awards the plaintiff, Garrity Industries, profits in the sum of forty thousand dollars. That is based upon all the evidence.

THE COURT: Denied. Exception. All right, gentlemen. Thank you.

(Whereupon, court adjourned at 4:15 p.m.).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

PAUL C. GARRITY and
GARRITY INDUSTRIES, INC., :
Plaintiffs :
vs. : CIVIL 15,922
SOCIETE LES PILES WONDER and :
WONDER CORPORATION OF AMERICA, :
Defendants :

- x

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from my original stenographic notes of the proceedings in the above-entitled cause heard on October 18, 1976, in the U.S. District Court, for the District of Connecticut, at Waterbury, before The Honorable Thomas F. Murphy, Senior United States District Judge.

Carol J. Beecher
Official Court Reporter

DATED: February 9, 1977.

JUDGMENT (PAGES 514a TO 517a).

JUDGMENT ON JURY VERDICT

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

CIVIL ACTION FILE NO. 15,922

PAUL G. GARRITY and GARRITY INDUSTRIES, INC.)
)
vs.) JUDGMENT
)
SOCIETE LES PILES WONDER and WONDER CORPORATION)
OF AMERICA)

This action came on for trial before the Court and a jury, Honorable THOMAS F. MURPHY, United States District Judge for the Southern District of New York, sitting by designation, presiding, and the issues having been duly tried and the jury having duly rendered its directed verdict,

It is Ordered and Adjudged that judgment be and is hereby entered in favor of the defendant SOCIETE LES PILES WONDER in the amount of ONE HUNDRED THIRTY FIVE THOUSAND NINE HUNDRED FIFTY-SEVEN DOLLARS and TEN CENTS ($135,957.10); that judgment be and is hereby entered in favor of the plaintiff GARRITY INDUSTRIES, INC. in the amount of ONE HUNDRED FIVE THOUSAND NINE HUNDRED DOLLARS ($105,900.00); that the difference between the aforementioned sums being THIRTY THOUSAND FIFTY-SEVEN DOLLARS and TEN CENTS ($30,057.10) is now due the defendant; and that interest be and is hereby awarded the defendant SOCIETE LES PILES WONDER at the rate of 6% on the sum of $133,446.32 from December 1, 1972 until date of payment of the aforesaid balance of $30,057.10 to the defendant. (The plaintiff Paul G. Garrity and the defendant Wonder Corporation of America have been dismissed as parties to the action as of September 13, 1976).

Dated at New Haven, Connecticut, this 21st day of October, 1976.

SYLVESTER A. MARKOWSKI
Clerk of Court

BY: /s/ Frances J. Consiglio
Deputy In Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - x

GARRITY INDUSTRIES, INC., :

Plaintiff, :

vs. : No. 15,922 CIV.

SOCIETE LES PILES WONDER, :

Defendant. :

- - - - - - - - - - - - - - - - - x

We, the jury find for the plaintiff, Garrity Industries, Inc., as directed by the Court, that it is entitled to a credit against the defendant of $65,900 for the return to the defendant of defective flashlights.

We, the jury, further find that the plaintiff, Garrity Industries, Inc., is entitled to a verdict of $40,000 as damages for lost profits.

- OR -

We, the jury, further find that the plaintiff, Garrity Industries, Inc., is not entitled to a verdict in any amount for lost profits.

We, the jury, find that the plaintiff, Garrity Industries, Inc., is entitled to a verdict of $0 for incidental damages.

- OR -

We, the jury, find that the plaintiff, Garrity Industries, Inc., is not entitled to a verdict in any amount for incidental damages.

We, the jury find for the defendant, Societe Les Piles Wonder, as directed by the Court, that it is entitled to a verdict of $133,446.32 against the plaintiff, Garrity Industries, Inc.

We, the jury, find, as directed by the Court, that the defendant, Societe Les Piles Wonder, is entitled to a verdict against the plaintiff, Garrity Industries, Inc., in the sum of $2,510.78.

We, the jury, find that the defendant, Society
incidental
Les Files Wonder, is entitled to a verdict for/damages
of $0________________ against the plaintiff, Garrity Industries, Inc.

- OR -

We, the jury, find that the defendant, Society
incidental
Les Piles Wonder, is not entitled to a verdict for/damages
against the plaintiff, Garrity Industries, Inc.

____
Foreman

Dated: October 18, 1976

MOTION PURSUANT TO RULE 59(e) (PAGES 518a TO 519a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAUL G. GARRITY and GARRITY INDUSTRIES, INC., Plaintiffs, - against - SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA, Defendants.	MOTION PURSUANT TO RULE 59(e) Index No. 15922 Civil

Plaintiff Garrity Industries, Inc., moves the Court to alter or amend the judgment heretofore entered in this action on October 21, 1976, insofar as said judgment awards interest to the defendant Societe Les Piles Wonder at the rate of 6% on the sum of $133,446.32 from December 1, 1972 until date of payment of the balance of $30,057.10 to the defendant, on the ground that any award of interest in this case is improper.

Dated: New York, New York
November 1, 1976

CASEY, LANE & MITTENDORF

By /s/ Alan R. Wentzel
A Member of the Firm
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Attorneys for Plaintiff

AFFIDAVIT OF ALAN R. WENTZEL IN SUPPORT OF MOTION (PAGES 520a TO 522a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

---x

PAUL G. GARRITY and GARRITY INDUSTRIES, INC., :
: AFFIDAVIT IN SUPPORT OF MOTION
Plaintiffs, :
- against - :
: Index No. 15922 Civil
SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA, :
Defendants. :

---x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ALAN R. WENTZEL, being duly sworn, deposes and says:

1. I am a member of the firm of Casey, Lane & Mittendorf, co-counsel for plaintiff, Garrity Industries, Inc. and am fully familiar with the facts pertinent to this action.

2. By this action, plaintiff sought to recover approximately $165,000.00 damages caused as a result of defendant's delivery of defective flashlights. By way of counterclaim, defendant sought recovery of approximately $135,000.00, representing the purchase price and certain other damages.

3. The action came on to be tried before the Honorable Thomas F. Murphy, and a jury on October 14, 15 and

18, 1976. A verdict was rendered for plaintiff in the sum of $105,900.00, and for defendant in the sum of $135,957.10. Judgment thereon was entered on October 21, 1976, awarding interest to the defendant at the rate of 6% on the sum of $133,446.32.

4. Plaintiff is a Connecticut corporation engaged in the business of mass distribution of low cost disposable products. Defendant is a French corporation engaged in the manufacture and sale of a variety of electrical products.

5. For a three and one-half year period commencing in 1968, plaintiff purchased approximately 5,000,000 "Lubox" disposable flashlights from defendant, all of which were paid for in due course.

6. From March 30, 1972 through July 3, 1972, defendant delivered 431,320 "Lubox" flashlights to plaintiff. Unknown to plaintiff, many, if not all, of these flashlights contained a latent defect.

7. Having received complaints in July and August of 1972 from dealers, retailers and sales personnel concerning the defective flashlights, plaintiff promptly informed defendant of the complaints by letter of August 25, 1972.

8. As of December 1972, when defendant's invoices were normally payable, both parties recognized that the deliveries had been defective, that returns were pouring in in large but unascertainable numbers, and that plaintiff

should be compensated in an undeterminable amount for its damages. Moreover, the question of whether plaintiff should be compensated for its lost profits was hotly disputed by the parties and was determined in plaintiff's favor only by the jury verdict.

9. Deponent respectfully submits that the jury's verdict awarding plaintiff damages of $105,900.00 as an offset to plaintiff's claim is a conclusive demonstration that plaintiff rightfully withheld payment of defendant's invoices. Thus, the withholding of any payment ultimately found due the defendant was not wrongful and hence, as shown in plaintiff's accompanying memorandum of law, no interest should have been awarded on any amount ultimately found due.

WHEREFORE, based on the foregoing affidavit and accompanying memorandum of law, deponent respectfully requests that plaintiff's motion to amend or alter the judgment heretofore entered in this action to exclude any award of interest in the sum of $133,446.32, or in the alternative to limit the interest awarded to the rate of 6% on the sum of $30,057.10, the balance due the defendant, be granted, and for such other and further relief as this Court may deem just and proper.

/s/ Alan R. Wentzel
Alan R. Wentzel

Sworn to before me this
1st day of November, 1976

Notary Public

CROSS MOTION PURSUANT TO RULE 59(e) (PAGES 523a TO 524a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PAUL G. GARRITY and GARRITY INDUSTRIES, INC.,

Plaintiffs,

- against -

SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA,

Defendants.

CROSS MOTION PURSUANT TO RULE 59(e)

Index No. 15922 Civil

Defendant, Societe Les Piles Wonder, hereby cross moves the Court for an order of this Court to alter or amend the judgment entered in this action on October 21, 1976, insofar as said judgment failed to award interest to the defendant at the rate of 6 percent on the sum of $2,510.78 from February 1, 1973, until the date of payment of the balance of $30,057.10 to the defendant, on the ground that under the facts and circumstances of this case, said interest should have been awarded.

Dated: New York, New York
November , 1976

Respectfully submitted,

Pennie & Edmonds

By /s/ James G. Foley
James G. Foley
330 Madison Avenue
New York, NY 10017

TIERNEY, ZULLO, FLAHERTY and HAUSER
P.O. Box 2028
134 East Avenue
Norwalk, CT 06852
Attorneys for Defendant

MEMORANDUM (PAGES 525a TO 527a).

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - -x

GARRITY INDUSTRIES, INC., :

Plaintiff, : No. 15,922 CIV.

vs. :

SOCIETE LES PILES WONDER, : MEMORANDUM

Defendant. :

- - - - - - - - - - - - - - - - - -x

MURPHY, D.J.

Both parties move, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, to alter or amend the Judgment entered herein on October 21, 1976 -- the plaintiff to strike the interest awarded to the defendant, and the defendant to add interest to an award in its favor.

Because there was no dispute, indeed it was admitted at trial, that plaintiff was indebted to the defendant in the sum of $133,446.32 for goods sold and delivered to it by defendant prior to any dispute concerning defective flashlights, a directed verdict in that amount was ordered by the Court in favor of the defendant, to which no exception was taken.

After the verdict was returned on October 18, 1976, we directed the Clerk to enter judgment as to a number of items, including the above amount with interest at six percent (6%) from December 1, 1972, a date much later than the actual date of a large part of the indebtedness. In our discretion we ordered the interest to attach for the damages suffered by defendant by the loss of use of that money. In fact, the defendant's counsel suggested the date of December 1, 1972.

We got the impression during the trial that the plaintiff's principal officer had a distaste for the payment of money (he was described as a slow payer), but he should offer orisons for the largesse that the jury showered on him or his company, considering the quality of the evidence that was submitted.

It was our opinion then, and is now, that it is only meet and proper that interest be awarded on such a past due debt to compensate a creditor for the loss of the use of such an amount of money.

The defendant moves to amend the judgment so as to provide for interest on the sum of $2,510.78, which amount was another item in its favor in the directed verdict. Had we been asked on the day when the verdict was returned, we would have been troubled about adding interest on this amount, but now the time has run and we are now without power. Rule 59(e) of the Federal Rules of Civil Procedure provides for the altering or amendment of a judgment on motion served within ten days after the entry of the judgment.

Defendant's motion to accomplish this was served more than the ten days that the Rules provide.

Accordingly, plaintiff's motion is denied, as is defendant's.

THOMAS F. MURPHY
Thomas F. Murphy
Senior United States District Judge

Dated: December 13, 1976.

NOTICE OF APPEAL (PAGES 528a TO 529a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-------------------------------------x

PAUL G. GARRITY and GARRITY INDUSTRIES, INC., :
: Index No. 15922 Civil
Plaintiffs,
: **NOTICE OF APPEAL**
- against -
:
SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA, :
Defendants. :

-------------------------------------x

NOTICE is hereby given that Garrity Industries, Inc., plaintiff above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the final judgment entered in this action on the 21st day of October, 1976, as awards interest at the rate of 6% on the sum of $133,446.32 from December 1, 1972 until date of payment of the balance of $30,057.10 to the defendant; and from the order denying plaintiff's motion to alter or amend said judgment to exclude such interest, entered in this action on the 13th day of December, 1976.

Dated: New York, New York
January 5, 1977

CASEY, LANE & MITTENDORF

By /s/ Alan R. Wentzel
A Member of the Firm
Office and P.O. Address
26 Broadway
New York, New York 10004
Tel.: (212) 943-3000

PHILIP R. DUNN
Office and P.O. Address
62 LaSalle Road
West Hartford, Connecticut
Tel.: (203) 521-7205

Co-Counsel for Plaintiff,
Garrity Industries, Inc.

TO: TIERNEY, ZULLY, FLAHERTY & CIOFFI, ESQS.
Co-Counsel for Defendant Societe Les Piles Wonder
134 East Avenue
P.O. Box 2028
Norwalk, Connecticut 06852
Tel.: (203) 853-7000

PENNIE & EDMONDS, ESQS.
Co-Counsel for Defendant
330 Madison Avenue
New York, New York 10017
Tel.: (212) 986-8686

NOTICE OF CROSS-APPEAL (PAGES 530a TO 531a).

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----------------------------------x

PAUL G. GARRITY and GARRITY INDUSTRIES, INC., :
:
Plaintiffs, :
- against - :
SOCIETE LES PILES WONDER and WONDER CORPORATION OF AMERICA, :
Defendants. :

-----------------------------------x

Index No. 15922 Civil

NOTICE OF CROSS APPEAL

NOTICE is hereby given that Societe Les Piles Wonder, the above-named defendant, having been served with plaintiffs' Notice of Appeal, filed on January 10, 1977, hereby cross appeals to the United States Court of Appeals for the Second Circuit from so much of the final judgment entered in this action on the 21st day of October, 1976, in favor of the plaintiffs, Paul G. Garrity and Garrity Industries, Inc., where the jury awarded damages to said plaintiffs in the amount of One Hundred Five Thousand Nine Hundred ($105,900) Dollars.

Dated: New York, New York
January 19, 1977

PENNIE & EDMONDS

By /s/ James G. Foley
James G. Foley
330 Madison Avenue
New York, New York 10017
Tel.: (212) 986-8686

TIERNEY, ZULLY, FLAHERTY &
  CIOFFI, ESQS.
134 East Avenue
P.O. Box 2028
Norwalk, Connecticut 06852
Tel.: (203) 853-7000

Attorneys for Defendant,
  Societe Les Piles Wonder

TO: CASEY, LANE & MITTENDORF
26 Broadway
New York, New York 10004
Tel.: (212) 943-3000

PHILIP R. DUNN
62 LaSalle Road
West Hartford, Connecticut
Tel.: (203) 521-7205

Attorneys for Plaintiffs,
  Paul G. Garrity and
    Garrity Industries, Inc.

PLAINTIFF'S EXHIBIT 1.

August 25, 1972

Monsieur Pierre Courtecuisse
Societe Piles Wonder
77, Rue Des Rosiers
93, Saint Ouen, France

Dear Pierre:

We have had a rash of reports across the country about the quality of Dispoz-a-lamp. It always seems to be the same story and it has to do with the switch. Either the switch will not turn on or when the switch is turned on it will click back in the off position but the lamp remains lighted. We have had reports from several cities in the country regarding this and I don't have any actual products back, but we do have several thousand being returned to us by customers at which time I will personally inspect the product.

This is the first time we have had such serious complaints on the flashlight and I am wondering if you are encountering some of the same difficulties in France.

Sincerely,

Paul G. Garrity

PGG/ac

cc: M. Sternlicht

PLAINTIFF'S EXHIBIT 2 (PAGES 533a TO 534a).

October 6, 1972

Monsieur Pierre Courtecuisse
Societe Piles Wonder
77, Rue Des Rosiers
93, Saint Ouen, France

Dear Pierre:

On August 25th I wrote to you regarding the problem that we were having with Dispoz-a-lamp and the necessity for replacing customers' inventories who have the defective lamps that I understand is a problem for you world-wide.

When your Mr. Sternlicht and Mr. Bertin were in my offices they assured me that the factory knew about the problem and that it was world-wide in scope and that they had not advised me of this problem because they had hoped that the flashlights that they had made for the United States did not have the same defects as the other flashlights throughout the world. They also stated that I would be protected on the cost of the flashlight, the duty and freight, which is only normal in international transactions.

I have been advised that you have 200,000 bodies that you can make up for me in France of first quality merchandise and I suggest you ship them immediately to Piles Wonder, Connecticut so that I can swap my inventory for saleable merchandise so that I can fill back orders as well as take care of the returns that I am being deluged by from my customers.

BEST COPY AVAILABLE

Monsieur Pierre Courtecuisse

I have not heard a thing from you and it is now October 6th. Please advise immediately before Dispoz-a-lamp is returned to us by all of our customers.

Sincerely,

PGG:md

Paul G. Garrity

GARRITY STD

GARRITY STD

PLAINTIFF'S EXHIBIT 3.

5C

WONDER STDEN

Inventory
displays +
which shipped
out (defective) also
would be coming
back.

MESSAGE NO 132 REF FL LE 10.10.72

ATTENTION MR PAUL GARRITY

;;;;;;;;;;;;;;;;;;;;;;;;;;;

1/ WE CONFIRM THAT WE ARE GOING TO SHIP 100.000 LAMPS NEWLY PRODUCED ON OCTOBER 31.

Bulbs ?
Displays

2/ WE ARE READY TO ISSUE CREDIT NOTES AT YOUR TRUE COST PRICE FOR THE DEFECTIVE LAMPS

PLEASE ADVISE QUANTITES

10/[illegible]/72

BEST PERSONNAL REGARDS

R PERTIN PILWONDER

	Displays	
1296	7344 x 12	88128
1296 B	66 x 12	792
[illegible]	123398	[illegible]

[illegible] 318

FIN

GARRITY STD

PLAINTIFF'S EXHIBIT 4.

wonder
Corporation of America

Mark Sternlicht
President

1082 Post Road Darien, Conn. 06820
P.O. Box 1204
Tel.: 203/655-7431
Telex 965868
Cable Add.: WONDERUSA

November 2, 1972

Mr. Paul Garrity, President
GARRITY INDUSTRIES
20 Garland Drive
Springdale, Connecticut

Dear Paul:

The factory continues to have difficulties in producing LUBOX. I have just been informed by telex that the earliest your new Dispo can be shipped is December 15.

We will try to improve this schedule if at all possible, and I will keep you advised.

Yours very truly,

WONDER CORPORATION OF AMERICA

Sternlicht /dr

Mark Sternlicht

MS:dlr

United States Affiliate of Société Les Piles Wonder, Saint-Ouen, France

PLAINTIFF'S EXHIBIT 5.

November 7, 1972

Mr. Mark Sternlicht
Wonder Corporation of America
1082 Post Road
Darien, Conn. 06820

Dear Mark:

I have heard on many occasions that you have approached several flashlight companies regarding the purchase of the flat battery for a disposable flashlight. As I told you, I fully intend to concentrate all my battery purchases with Piles Wonder. However, if it is Piles Wonder's policy to put people in competition with me I certainly will have to take a look at other manufacturers of batteries.

I am amazed that the factory is having difficulties producing the Lubox. and is delaying my shipments until after the Christmas season. It seems incomprehensible to me that a manufacturer who controls their own battery source and has been making this type flashlight for many years cannot solve the difficulties that they have experienced. This problem of quality which is readily admitted by the factory should have been called to our attention much before it was since we have been shipping inferior quality product this whole season and has certainly caused a bad name for this type flashlight.

We are holding our inventories and certainly expect to be reimbursed for the cost of the freight and the duty for this merchandise. I know this was approved by you, the factory, and Mr. Bertin, but I have heard nothing else about it since this approval.

Sincerely,

PGG/ac

Paul G. Garrity

PLAINTIFF'S EXHIBIT 6.

November 17, 1972

Monsieur Pierre Courtecuisse
Societe Piles Wonder
77, Rue Des Rosiers
Saint Ouen, France

Dear Pierre:

In reference to your recent telex regarding 100,000 Dispoz-a-lamps ready for shipment December 15th, please ship when ready. Please be sure that these are first quality lamps since we are still having the problem that we discussed before.

In addition to these 100,000 lamps, please schedule another 100,000 for shipment January 10th and in addition to this let us know what quantities you are able to produce by month in 1973 so that we can schedule our requirements accordingly. These flashlights are to be shipped in egg crates.

Sincerely,

Paul G. Garrity

PGG/ac

cc: B. Bertin

PLAINTIFF'S EXHIBIT 7.

wonder
77, RUE DES ROSIERS
93 - SAINT-OUEN
TÉL 076-41-03

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD (CONNECTICUT 06907)
U.S.A.

MS/TD - 400 0011 - Saint-Ouen, the 17 th November 1972

Attention Mr. Paul GARRITY
Président -

Dear Paul,

I have reviewed your letter of November 7 th to Wonder Corporation of America with Messr. BERTIN and STERNLICHT.

At the same time I have been advised of Mr. BERTIN's letter to you of November 10 th concerning past due accounts.

I think it is important that you recognize that we cannot consider the settlement of any eventual claims you may have against our Company untill all past due accounts havo been settled.

You certainly know that after the settlement of the past due accounts there will still remain FF 270,120 in your current account corresponding to the last six invoices.

Yours very truly.

Pierre COURTECUISSE.-

PLAINTIFF'S EXHIBIT 8,
DEFENDANT'S EXHIBIT M.

December 12, 1972

Mr. Paul Garrity
GARRITY INDUSTRIES
20 Garland Drive
Stanford, Connecticut

Dear Paul :

This will confirm our conversation of December 6, in the course of which I explained to you the cause of the defect in the Dispoz-A-Lamp, and the way we are repairing same.

I am pleased to advise that the tooling and jigs necessary to repair the units will be available to you on or about December 26, 1972.

At your earliest convenience, I would appreciate being advised the total quantity of units you still have in inventory which will have to be repaired, and your estimated costs for the repairs.

I have forwarded your battery requests to France, and will advise you upon receipt of their reply.

Sincerely,

WONDER CORPORATION OF AMERICA

Mark Sternlicht

MS:dlr

PLAINTIFF'S EXHIBIT 9 (PAGES 541a TO 542a).

January 19, 1973

Mr. Pierre Courtecuisse
Societe Piles Wonder
77, Rue Des Rosiers
93, Saint Ouen, France

Dear Pierre:

As you know, we have had our problems on both the delivery and quality of Dispoz-a-lamp. It was unfortunate that you did not advise us of the quality problems you were having in manufacture and that we became aware of these when our customers began to complain about the quality of the product. Beyond that, when we did become aware of the quality problem you were unable to ship us any additional merchandise which meant we had to keep shipping the poor quality merchandise through the Fall of 1972. This problem has hurt our company image, our trade market, and cost us problems on the believability of the quality of our other products. Your Mr. Sternlicht advises that you are willing to give a 6% credit on the shipments which is completely unacceptable. The problem existed on more than just the one lot that you advised us of and, beyond that, as you know, in the disposable business many consumers who are unsatisfied with the quality of the product never take the time to return it to the store but just decide they will never buy that company's products again.

When your Mr. Bertin and Mr. Sternlicht were in my office and discussed the problem that you had in Europe, as well as the problem that existed here in the States, they stated that there would be a full credit issued including freight and duty for all the shipments of poor quality product and this is exactly what I expect. In addition, after doing business with you for many years I was amazed to have my competitor Lumijet show me a sample of your new disposable flashlight which you are introducing this year. It is strange when your and my competitor is given one of your disposable flashlights and he is the one that announces it to me.

We also were surprised to find that you are making a flashlight for Ashflash which is very similar to Dispoz-a-lamp and is selling at less than Dispoz-a-lamp's price. This also was called to our attention by some of our customers and I believe that you would not put up with this type of action by a supplier in France and we certainly are no different in attitude than you in Europe.

It appears now that we must continue with our developmental program which in each case we have gone to you and asked you to produce our new models for us but in each case you have declined to produce these models for us. Fortunately, we have designed our products to take a multitude of batteries both American and French and if you are interested in getting our battery business it must be done by purchase order on a competitive basis.

If we are to continue doing business together it is necessary that we have a meeting and set the ground rules for our operations so that we both have a full understanding of where we are going and what we are doing.

Sincerely,

PGG/ac

Paul G. Garrity

PLAINTIFF'S EXHIBIT 10.

November 27, 1972

Monsieur Pierre Courtecuisse
Societe Piles Wonder
77, Rue Des Rosiers
Saint Ouen, France

Dear Pierre:

Thank you for your letter of November 17th and calling my attention to Mr. Bertin's letter of November 10th.

In reviewing Mr. Bertin's letter I find that our Accounting Dept. is behind in some payments but I also find his letter is in error. Your invoices # 2113, #2114, #2142, #2143, #2144, #2163 and #2255 were paid by us last April check number 1644 and check number 1632.

The Accounting Dept. tells me that they have just asked the bank to buy the French francs to pay invoices #2304, #2357, #2358, #2324 and #2325 which means that we have a total of 7 invoices that are still open with you. We do not intend to hold up payment on any invoice in lieu of settlement of any claims that we might have regarding the defective merchandise which you readily agreed to reimburse us for our total cost. However, we have heard absolutely nothing from you since we called this to your attention and I understand you knew about this problem before we discovered it on the American market.

I think it is only right that if you value our collaboration that you would have settled any problems that have been caused by quality before this which I know is normal on the part of most manufacturers. Even the replacement of the merchandise that was promised has not been sent to us and we have had to turn down orders because we have not been able to supply our customers a quality product.

We are now approaching the first quarter of 1973 and again we ask that we be notified what deliveries you will be able to supply us with during next year so that we can announce our promotional plans accordingly. Please let me hear from you at your earliest convenience.

Sincerely,

Paul G. Garrity

PGG/ac
cc: J. Chymeryc

PLAINTIFF'S EXHIBIT 11.

wonder

SIÈGE SOCIAL :
77 RUE DES ROSIERS
93406 ST OUEN
TEL. 076.11.03

CERTIFIED MAIL
Mr Paul GARRITY
GARRITY INDUSTRIES
20 Garland Drive
STAMFORD (CONNECTICUT 06907)
U.S.A.

BB/TD

January 25, 1973

Dear Mr GARRITY,

We wish to inform you that we have decided to enter the disposable flashlight market under our own name in the United States.

We appreciate your past patronage and will be glad to consider any future order from you for our products on a non exclusive basis and under the market conditions existing at the time such orders are placed.

Yours very truly.

Pierre COURTECUISSE

Administrateur.-
Directeur Commercial.-

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

INVOICE

№ 8827

Schedule A

①

SOLD TO
LES PILE WONDER
WONDER CORP. OF AMERICA
1082 POST ROAD
DARIEN, CT.
ATT: MARK STERNLICHT

SHIP TO

INVOICE DATE 5/29/73	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
125,812	DISPOZ-A-LAMPS	.41		51,582.92
	FREIGHT.........			177.31
				51,760.23
	RETURNED MERCHANDIZE AS PER INSTRUCTIONS			

jm

FLASH FORM

PLAINTIFF'S EXHIBIT 12 (PAGES 545a TO 566a).

ıRAIGHT '1 OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE 546a

Shipper's No. 12017

Carrier's No.

(Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

at STAMFORD, CONN. 06907 19 from GARRITY INDUSTRIES, INC.

ONSIGNED TO & DEST-INATION

Lespile Wonder
WONDER CORP OF AMERICA
1082 Post Road
Darien, Conn.

Deliver to
Germoe Vidal
4 Eder Rd
West Haven Conn

PRICE CODE	TERR.	COMM. RATE	ORD. TYPE	S/A

CUST. NO. T/C

FREIGHT DESCRIP.	FRT. CHGS.	REG (1)	M/B (2)	PRM (3)	A/S (4)	PRO (5)

DELIVERING CARRIER
CAR OR VEHICLE INT. NO.
GARRITY VAN

VIA

ORDER DATE	CUSTOMER ORDER NO.	MARKING INSTRUCTIONS	DATE SHIPPED	OTHER THAN TRUCK TYPE BELOW
			03/01/73	

XXXXXXXXXXXXXXXXXXXXXXXXXX DESCRIPTION UNITS

SHIPPED BY

ctns...Blue Dispoz-a-lamp. (72 pcs per ctn) = 1440 pcs

ctns...Defective lamps (asst colors) (205 p/ctn)= 4100 pcs

100 UNITS RECEIVED AS DEFECTIVE TO BE CREDITED AGAINST OUTSTANDING ACCOUNT.

440 UNITS RECEIVED FOR INSPECTION AND FOR WHATEVER ULTIMATE CREDIT TO BE AGREED.

Trucks B/P flashlight [illegible]

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

[illegible]

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

Ctns

4100
1440
5540

PARTIAL SHIPMENT - BALANCE TO FOLLOW

REC'D BY: Harry Pat

DATE : 3/1/73

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (sub. to corr.)	CLASS OR RATE	CHK. COL.
	LIGHTERS 11230 SUB 1			
	FLASHLIGHTS W/B 109800 SUB 2			

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification. (†) Shipper's imprint in lieu of stamp: not a part of bill of lading approved by the Interstate Commerce Commission.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

GARRITY INDUSTRIES, INC.

Agent, Per

STRAIGHT BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE 547a

Shipper's No. 10214

Carrier's No.

(Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

at STAMFORD, CONN. 06907 19 from GARRITY INDUSTRIES, INC. D7

CONSIGNED TO & DESTINATION
LESPILE WONDER
WONDER CORP OF AMERICA
1082 POST RD
DARIEN, CT

PRICE CODE	TERR.	COMM. RATE	ORD. TYPE	S/A

GERMAC BONDED WAREHOUSE
4 EDER ROAD
WEST HAVEN CT

CUST. NO. T/C

FREIGHT DESCRIP.	FRT. CHGS.	REG. (1)	M/B (2)	PRM (3)	A/S (4)	PRO (5)

DELIVERING CARRIER
CAR OR VEHICLE INT. NO.

VIA

ORDER DATE	CUSTOMER ORDER NO.	MARKING INSTRUCTIONS	DATE SHIPPED	OTHER THAN TRUCK TYPE BELOW

DISPLAY QTY. ORD.	DISPLAY QTY. SHPD.	B/O	DISPLAY NO.	DESCRIPTION	UNITS
983..	ctns..	.Asst	colors, di	spoz-a-lamps	
251..	ctns..	.Asst	colors, de	fective dispoz-a-lamps	
✓34					
//					

SHIPPED BY

REC'D BY:

DATE : 5/8/7[illegible] 1234

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (sub. to corr.)	CLASS OR RATE	CHK. COL.
	LIGHTERS 11230 SUB 1			
	FLASHLIGHTS W/B 109800 SUB 2			

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification. (†) Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

GARRITY INDUSTRIES, INC.

Per

Agent, Per

Permanent post-office address of shipper: STAMFORD, CONN. 06907

Stored on trailer 5/2/73 #2 Hawk traile
Hawks Seal # 0953

asst color 1296B	1 ctns	78 pcs per ctn	32# per bo
asst color 1296	15 ctns	72 "	29# "
asst color	1 ctns	46 "	18# "
asst color	1 ctns	100 "	36# "
defective 0161	12 ctns	205 "	69# "
defective 0161	1 ctns	201 "	68# "
defective	27 ctns	205 "	69# "
defective	1 ctns	87 "	32# "
defective	1 ctns	80 "	30# "
defective	1 ctns	186 "	50# "
defective	1 ctns	201 "	68# "
defective	1 ctns	207 "	69# "

defective	8957	= 18 ctns
Good	1304	= 45 "
		63

1171
143 = 13/71

35	2520	1015	orange	72	29
70	5040	2030	orange	72	29
✓ 68	4896	1972	orange	72	29
112	22960	7728	defective	205	69
✓ 58	4176	1682	1296	72	29
35	5320	1750	defective	152	50
61	8845	2928	defective	145	48
✓ 114	8208	3306	yellow	72	29
✓ 33	2376	957	white	72	29
✓ 61	4392	1769	white	72	29
✓ 68	4896	1972	white	72	29
✓ 68	4896	1972	white	72	29
✓ 68	4896	1972	white	72	29
✓ 68	4896	1972	white	72	29
✓ 68	4896	1972	white	72	29
✓ 32	2304	928	white	72	29
22	3014	1012	defective	137	46
✓ 55	5500	1980	Imprint	100	36
✓ 12	1200	432	asst color	100	36
✓ 4	400	144	Imprint	100	36
1	205	69	defective	205	69
1	89	30	defective	89	30
✓ 4	288	116	Imprint	72	29
✓ 1	60	25	1296	60	25
1	100	36	defective	100	36
✓ 1	72	29	yellow	72	29
✓ 8	576	232	blue	72	29
✓ 1	72	29	orange	72	29
✓ 2	144	58	white	72	29
✓ 1	38	15	white	38	15
✓ 3	216	87	Imprint	72	29
1171	110,011	4[illegible]4			
Ctns	Pcs	[illegible]		Pcs per case	# per box

Correction

233 defective on shipment #2
45
278

938 Good
18
956

278
956
1234

CO[illegible]E RECEIPT
DR[illegible]

TRUCK NO.

TIME IN

TIME OUT

CONSIGNEE
GERMAC BONDED WAREHOUSE
4 EDER ROAD
WEST HAVEN, CONN.

HAWK
OF CONNECTICUT, INCORPORATED

137 HARVARD AVENUE
STAMFORD CONN. 06902
(203) 327-6511 (212) 665-2871

SHIPPER
GARRITY INDUSTRIES, INC.
STAMFORD, CONN. 06907

PRO NO. 3882

DATE: 3-6-73

SHIPPER'S NO.	TRANSFER TO OR FROM	PU DRIVER
12231		

NO. OF PIECES	DESCRIPTION	WEIGHT	RATE	EXT	PREPAID	COLLECT
~~[illegible]~~ 1234	CTNS FLASHLIGHTS John Coppola	41234	43		177.31	

ICC REGULATIONS REQUIRE PAYMENT WITHIN SEVEN DAYS
RECEIVED IN GOOD ORDER BY

DATE

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

INVOICE

№ 7594

Schedule A

DEBIT MEMO ②

SOLD TO

LESPILE WONDER
WONDER CORP. OF AMERICA
24 HARVARD VIEW AVENUE
STAMFORD, CONN. 06900

SHIP TO

INVOICE DATE 10/22/73	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
26,898 26,898	DISPOZ-A-LAMP	.41		11,028.18
	FREIGHT AND LABOR.......			27.45
				11,055.63 ✓

jm

FLASH FORM

BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE 553a

Shipper's No. ....
Carrier's No. ....

(Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

at STAMFORD, CONN. 06907 19 from GARRITY INDUSTRIES, INC.

CONSIGNED TO & DESTINATION

PRICE CODE	TERR.	COMM. RATE	ORD. TYPE	S/A

LESPILE WONDER
WONDER CORP OF AMERICA
24 HARVARD VIEW AVE
STAMFORD, CT 06900

CUST. NO. T/C

FREIGHT DESCRIP.	FRT. CHGS.	REG. (1)	M/B (2)	PRM (3)	A/S (4)	PRO (5)

DELIVERING CARRIER
CAR OR VEHICLE INT. NO.
GARRITY VAN

VIA

ORDER DATE	CUSTOMER ORDER NO.	MARKING INSTRUCTIONS	DATE SHIPPED	OTHER THAN TRUCK TYPE BELOW
			10/11/73	

DISPLAY QTY. ORD.	SHPD.	B/O	DISPLAY NO.	DESCRIPTION	UNITS	SHIPPED BY
233	ctns...Asst. Colors,dispoz-a=lamp				26,898	

REC'D BY

DATE 10/11/7

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (sub. to corr.)	CLASS OR RATE	CHK. COL.
	LIGHTERS 11230 SUB 1			
	FLASHLIGHTS W/B 109800 SUB 2			

Per
(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification. (†) Shipper's imprint in lieu of stamp: not a part of bill of lading approved by the Interstate Commerce Commission.

The agreed or declared value of the property is here specifically stated by the shipper to be not exceedin

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

per

GARRITY INDUSTRIES, INC.

Per

Agent, Per

Permanent post-office address of shipper: STAMFORD, CONN. 06907

GARRITY INDUSTRIES 554a

20 GARLAND DRIVE, STAMFORD, CONN. 06907

INTER OFFICE MEMO

TO: Louis Slayton
FROM: John Coppola

Re: worden lamps delivered to
worders warehouse.
Harvard view Ave.
Stamford Conn.

(a) 2 men loading truck at Building #1
John Coppola 1½ hrs
Joe Prele 1½ hrs

(b) 5 miles each way in Rental truck

(c) 2 men unloading truck at Worden Warehouse.
John Coppola 1 hr.
Joe Prele 1 hr.

[illegible] 1.20

[illegible] 5.00

8.75 10/11/73

Prele [illegible]

JC

Re: Good lamps returned to
Wonder Corp of America

Shipment #3
Shipped 10/11/73

30 ct x →

Bulk @ 205

6,308

Red label 71 ctns →

Displays @ 72

5,112

= 11,420

39 ctns DEF →

Bulk @ 205

7790
205

7,995

No label

77 ctns

Displays @ 72

5,544

13,683

2 ctn x 72

Blister Pack - ~~no label~~

144

25103

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

INVOICE

№ 7715

DEBIT MEMO

Schedule A

③

SOLD TO
LESPILE WONDER
WONDER CORP. OF AMERICA
24 HARVARD VIEW AVENUE
STAMFORD, CONN. 06900

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
2/28/74							
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
12,746	DISPOZ-A-LAMP	.41		5,225.86

jm

FLASH FORM

558a

[redacted]-NOT NEGOTIABLE

Shipper's No. 29292

Carrier's No.

from GARRITY INDUSTRIES, INC.

BEST COPY AVAILABLE

CONSIGNED TO & DESTINATION

LESPILE WONDER
WONDER CORP OF AMERICA
24 HARVARD VIEW AVENUE
STAMFORD, CONN 06900

VIA

	ORDER DATE	CUSTOMER ORDER NO.
[redacted]	2/20/74	

DESCRIPTION	UNITS	DATE SHIPPED	OTHER THAN TRUCK TYPE BELOW:
[redacted] DEFECTIVE	12,746	2-21-74	Garrity Van
	x 41	PACKED BY	
	5,22586	DELIVERING CARRIER OR VEHICLE INIT.	NO.

NOTE: SHORTAGES MUST BE REPORTED WITHIN SEVEN (7) DAYS OF RECEIPT OF MERCHANDISE.

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

PREPAID

NO. OF PACKAGES	[redacted]	*WEIGHT (sub. to cor.)	CLASS OR RATE	CHK COL
[redacted]	[redacted] FLAMMABLE GAS (PERMIT SA1494)		100	
[redacted]	[redacted] FLAMMABLE GAS (PERMIT SA1494)		2	
[redacted]	[redacted]		70	
[redacted]	[redacted]		4	
[redacted]	[redacted]			
[redacted]	[redacted]		TOTAL WEIGHT	

Received $ ____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The [redacted] carrier's certificate thereon and all other requirements of Rule 41 of the [redacted] part of bill of lading approved by the Interstate Commerce Commission.

This is to certify [redacted] marked and labeled, and are in proper condition for transportation, according to [redacted]

*If the [redacted] the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—[redacted] in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

____ per ____

GARRITY [redacted]

Agent Per

559a

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

INVOICE

№ 7723

DEBIT MEMO

Schedule A
④

SOLD TO
LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
5/31/74							

DATE SHIPPED	SHIP VIA	F.O.B.

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
6,150	ASSORTED COLORS DEFECTIVE DISPOZ-A-LAMP	.41		2,521.50

jm

FLASH FORM

560a

STRAIGHT BILL ~~OF~~ [illegible] [illegible]GOTIABLE

Shipper's No. MT 91702
Carrier's No.

RECEIVED, subject to [illegible]

at STAMFORD, CONN [illegible]

from GARRITY INDUSTRIES, INC.

BEST COPY AVAILABLE

CUST. NO.	STATE CODE	[illegible]

SOLD TO

LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARVARD VIEW AVENUE
STAMFORD, CONN 06900

GARRITY TRUCK

	MARKING INSTRUCTIONS	[illegible]	[illegible] DATE	CUSTOMER ORDER NO.
			5/29/74	

DISPLAY QTY. ORD.	SHPD.	B/O	[illegible]	[illegible]	UNITS
30	ctns.,Asst. Colors [illegible]				6,150

DATE SHIPPED

OTHER THAN TRUCK TYPE BELOW:

PACKED BY

DELIVERING CARRIER OR VEHICLE INIT. NO.

NOTE: SHORTAGES MUST BE REPORTED WITHIN SEVEN (7) DAYS OF RECEIPT OF MERCHANDISE.

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

RPC'D BY

DATE 5/28/74

ew

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	WEIGHT (Sub. to Cor.)	CLASS OR RATE	CHK COL.
◀ TOTAL PACKAGES			◀ TOTAL WEIGHT	

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per
(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification. (†) Shipper's imprint in lieu of stamp, not a part of bill of lading approved by the Interstate Commerce Commission.

This is to certify that the above articles are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, according to the applicable regulations of the Department of Transportation.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE – Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

GARRITY INDUSTRIES, INC.

Agent Per

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

[redacted]

Debt Memo

Nº 7730

Schedule A ⑤

SOLD TO
LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

SHIP TO
LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
7/12/74							

DATE SHIPPED	SHIP VIA	F.O.B.

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
2,246 UNITS	Dispoz-a-lamp defective	.41		920.86
	thru 6/30/74			

FLASH FORM

STRAIGHT BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE 562a

Shipper's No. MT 91724
Carrier's No. ....

(Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

at STAMFORD, CONN. 06907 from GARRITY INDUSTRIES, INC.

CUST. NO.	STATE CODE	TERR.	P/C	I/T	T/C		OUR ORDER #

SOLD TO

CONSIGNED TO & DESTINATION

LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN 06900

VIA GARRITY TRUCK

	MARKING INSTRUCTIONS	FREIGHT DESCRIP.	FRT. CHGS.	ORDER DATE	CUSTOMER ORDER NO.
				7/9/74	

DISPLAY QTY. ORD.	SHPD.	B/O	DISPLAY NO.	DESCRIPTION	UNITS
11	ctn.	Asst.	colors Dis	poz-a-lamp Defective	2,246
					.41
					920.86
			REC'D BY		
ph			DATE 7/12/74		

DATE SHIPPED 7-12-74

OTHER THAN TRUCK TYPE BELOW:

PACKED BY G

DELIVERING CARRIER OR VEHICLE INIT. G.I. Del.

NO.

NOTE: SHORTAGES MUST BE REPORTED WITHIN SEVEN (7) DAYS OF RECEIPT OF MERCHANDISE.

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (sub. to corr.)	CLASS OR RATE	CHK COL
	Subject to Count			
	◀ TOTAL PACKAGES		◀ TOTAL WEIGHT	

Received $ .... to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per ....

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$ ....

[illegible]

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

[redacted]

№ 1599

DEBIT MEMO

Schedule A

6

SOLD TO

LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
8/15/74							

DATE SHIPPED	SHIP VIA	F.O.B.

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
2,870	DEFECTIVE DISPOZ-A-LAMPS	.41		1,176.70

July 1974 Returns

jm

FLASH FORM

NG SHORT FORM—ORIGINAL—NOT NEGOTIABLE 564a

Shipper's No. MI 91735

(Name of Carrier)

Carrier's No. ....

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

STAMFORD, CONN. 06907

CUST. NO.	STATE CODE	TERR.	P/C	I/T	T/C		OUR ORDER #

from GARRITY INDUSTRIES, INC.

Debt Memo

SOLD TO

CONSIGNED TO & DESTINATION
LESPILE WONDER
WONDER CORPORATION OD AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

VIA GARRITY TRUCK

MARKING INSTRUCTIONS	FREIGHT DESCRIP.	FRT. CHGS.	ORDER DATE	CUSTOMER ORDER NO.
			8/13/74	

DISPLAY QTY. ORD.	SHPD.	B/O	DISPLAY NO.	DESCRIPTION	UNITS
14	ctn.	Asst.	colors	Dispoz-a-lamp Defective 2870	2,870
					X .41
					$ 1,176.70

DATE SHIPPED 8/13/74

OTHER THAN TRUCK TYPE BELOW:

PACKED BY G

DELIVERING CARRIER OR VEHICLE INIT. GI Del

NO.

NOTE: SHORTAGES MUST BE REPORTED WITHIN SEVEN (7) DAYS OF RECEIPT OF MERCHANDISE.

REC'D BY

DATE 8/13/74

Subject to Count

note Please do not make your Cartons to heavy

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Sub. to cor.)	CLASS OR RATE	CHK COL

◄ TOTAL PACKAGES

◄ TOTAL WEIGHT

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per

(The signature here acknowledges only the amount prepaid.)

Charges advanced:

$

used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of Freight Classification. (†) Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission.

that the above articles are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, plicable regulations of the department of transportation.

ves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." 's is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

STRIES, INC.

ress of shipper: STAMFORD, CONN 06907

Agent Per

SHIPPING NOTICE 2

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

[redacted]

Nº 7744

DEBIT MEMO

Schedule A

⑤

SOLD TO

LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
2,232	ASSORTED DISPOZ-A-LAMP DEFECTIVE	.41		915.12

August - 1974

jm

FLASH FORM

STRAIGHT BILL OF LADING–SHORT FORM–ORIGINAL–NOT NEGOTIABLE 566a

Shipper's No. 36340

Carrier's No.

(Name of Carrier)

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

at STAMFORD, CONN. 06907 from GARRITY INDUSTRIES, INC.

CUST. NO.	STATE CODE	TERR.	P/C	I/T	T/C		OUR ORDER #

SOLD TO

CONSIGNED TO & DESTINATION

LESPILE WONDER
WONDER CORPORATION OF AMERICA
24 HARBOR VIEW AVENUE
STAMFORD, CONN. 06900

VIA

MARKING INSTRUCTIONS	FREIGHT DESCRIP.	FRT. CHGS.	ORDER DATE	CUSTOMER ORDER NO.
			9/16/74	

DISPLAY QTY. ORD.	SHPD.	B/O	DISPLAY NO.	DESCRIPTION	UNITS
12	ctn.	Asst. colors	Dispoza-a-lamp	Defective 2,232	2,232
	1	REC'D BY	D Silverman		
	1	DATE	9/18/74		
PH			Subject to Count		

DATE SHIPPED 9-18-74

OTHER THAN TRUCK TYPE BELOW:

PACKED BY G

DELIVERING CARRIER OR VEHICLE INIT. GI Del. NO.

NOTE: SHORTAGES MUST BE REPORTED WITHIN SEVEN (7) DAYS OF RECEIPT OF MERCHANDISE.

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

PREPAID

NO. OF PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (sub. to corr.)	CLASS OR RATE	CHK COL
	LIGHTERS 111230 SUB I W/FUEL & FLINT–BUTANE FLAMMABLE GAS (PERMIT BA1494)		100	
	LIGHTERS 47060 SUB I W/FUEL & FLINT–BUTANE FLAMMABLE GAS (PERMIT BA1494)		2	
	FLASHLIGHTS W/B 109800 SUB II		70	
	FLASHLIGHTS W/B 46050 SUB VI		4	
	◀ TOTAL PACKAGES		◀ TOTAL WEIGHT	

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per

(The signature here acknowledges only the amount prepaid.

Charges advanced:

$

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Rule 41 of the Consolidated Freight Classification. (†) Shipper's imprint in lieu of stamp: not a part of bill of lading approved by the Interstate Commerce Commission.

This is to certify that the above articles are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, according to the applicable regulations of the department of transportation.

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE–Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

per

GARRITY INDUSTRIES, INC.

Per

Agent Per

Permanent post-office address of shipper: STAMFORD, CONN 06907

SHIPPING NOTICE 2

1.

PLAINTIFF'S EXHIBIT 13 (PAGES 567a TO 570a).

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

№ 7872

E-1

DEBIT MEMO

SOLD TO
LES PILES WONDER
77 RUE DES ROSIERS
93 SAINT QUEN, FRANCE

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD
9/29/72						
DATE SHIPPED	SHIP VIA			F.O.B.		

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
	LABOR FOR CHECKING DISPOZ-A-LAMPS FOR DEFECTIVE SWITCHES			625 .2

jm

FLASH FORM

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

INVOIC

№ 8303 E.V

DEBIT MEMO

SOLD TO:
LES PILES WONDER
77 RUE DES ROSIERS
93 SAINT QUEN, FRANCE

SHIP TO:

INVOICE DATE 12/12/72	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
	LABOR FOR CHECKING DISPOZ-A-LAMPS FOR DEFECTIVE SWITCHES			$ 170.13
jm				

FLASH FORM

GARRITY INDUSTRIES INC.
20 GARLAND DRIVE
STAMFORD, CONNECTICUT 06907
(203) 329-8181

INVOICE

№ 8157

E-2

DEBIT MEMO

SOLD TO
LES PILES WONDER
77 RUE DES ROSIERS
93 SAINT QUEN, FRANCE

SHIP TO

INVOICE DATE 2/7/73	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
	LABOR FOR CHECKING DISPOZ-A-LAMPS FOR DEFECTIVE SWITCHES			$ 167.74

jm

FLASH FORM

Time used to inspect and check Lamps 12-15-72 thru 1-15-73

Cosmo Ranuado 40 hrs.

Gross	FICA	F.W.T.		Net
150.00	8.77	17.90	R. Fusco	123.33

State U.T.	F U T
4.05	4.92

DEFENDANT'S EXHIBIT A (PAGES 571a TO 572a).

M. STERNLICHT
W. C. A.
DARIEN

TELEPHONE
203-329-[illegible]
TELEX
965933

GARRITY INDUSTRIES 20 GARLAND DRIVE, STAMFORD, CONN. 06907

OFFICE OF THE PRESIDENT

Def'ts. Garrity ex. 9
for id. 7/1/74 gp.

July 21, 1972

Monsieur Pierre Courtecuisse
Societe Piles Wonder
77, Rue Des Rosiers
93 Saint Ouen, France

Dear Pierre:

It is my understanding you may think that with the introduction of disposable flashlights manufactured by Garrity Industries that we intend to discontinue the purchase of Dispoz-a-lamp.

To set the record clear, we have no intentions of discontinuing our Dispoz-a-lamp made by you in France and we look on it as a very important part of our line of disposable flashlights. As I told you several years ago, the disposable flashlight industry could not be brought to its potential unless a line of disposables were offered in different shapes, designs and appeals. Lumijet has done just this. I even requested you develop a disposable penlight which was never done, and consequently, I manufactured my own disposable penlight. I submitted designs on our new gunlight to you and you seemed to have no interest in manufacturing the product for me.

I think in every situation Garrity Industries has acted with complete honor and we certainly will continue to do business in this manner. Even though we know that we can get a 4 1/2 volt battery for our new gunlight flashlight from other manufacturers we have placed orders directly with you because of our association.

You might also be interested to know that the disposable flashlight business in the United States has dropped off considerably and I believe our new product introductions are late, but hopefully we'll be able to re-excite the consumer and keep him in a frame of mind that is beneficial to the disposable flashlight industry.

Mr. Pierre Courtecuisse July 21, 1972

We currently have over 500,000 Dispoz-a-lamps in inventory and do expect to place another order for the Christmas selling season, but until we can move some of this inventory out we are not in a position to place an immediate order.

The introduction of our gunlight will not effect Dispoz-a-lamp to any great degree since it will not be introduced until very late this year or early next year. Even though no explanation is necessary regarding our manufacture of two disposable flashlights, I feel that you and your staff might feel better having the assurance from me directly that there are no intentions of discontinuing our Dispoz-a-lamp made by you.

Sincerely,

Paul G. Garrity

PGG/ac

DEFENDANT'S EXHIBIT D (PAGES 573a TO 574a).

Wonder
Corporation of America

Mark Sternlicht
President

1082 Post Road Darien, Conn. 0682
P.O. Box 1204
Tel.: 203/655-7431
Telex 965608
Cable Add.: WONDERUSA

s/ Garrity
7 paid.

January 5, 1973

Mr. Paul Garrity, President
GARRITY INDUSTRIES
20 Garland Drive
Springdale, Connecticut

Dear Paul:

Further to our recent telephone conversation, I have been in contact with the factory by telephone and am informed our reject rate in LUDOX is 6%. We are therefore prepared to credit your account with the corresponding percentage, to be applied to all Dispoz-A-Lamps delivered to you beginning with your invoice # 2328. Does not include 1st 4 invoices

In addition, I am authorized to advise you that should you be in a position to materially demonstrate that the actual reject is higher, we would issue additional credit as required.

I sincerely hope the above information will enable you to bring the outstanding amounts up to date, and to resolve all outstanding matters. As I have told you, I will be away until January 11, and then until the 19th. Should there be any need to get in touch with me, my office will have my whereabouts.

Also, Bill Heath is familiar with the present situation, and during my absence will be happy to assist you in whatever way he can.

Sincerely,

WONDER CORPORATION OF AMERICA

Sternlicht /dr

Mark Sternlicht

/dr

According to our information, the following invoices have not been paid:

2309	March 9, 1972	
2357	March 30, 1972	76,608 LUBOX
2358	March 30, 1972	17,064 "
2324	April 21, 1972	94,464 "
2325	April 21, 1972	

2328	April 24, 1972	30,672 LUBOX
2329	April 24, 1972	40,032 "
2330	April 24, 1972	93,024 "
2401	April 28, 1972	21,312 "
2500	July 3, 1972	83,520 "
2501	July 3, 1972	24,624 "
2502	July 3, 1972	
2535	July 31, 1972	

2555	Due January 21, 1973
2005	Due February 10, 1973

0.66.

DEFENDANT'S EXHIBIT E.

SALES BULLETIN

#82

1/26/73

TO: ALL SALESMEN, REG. MGRS. & ALL REPS

FROM: SALES HEADQUARTERS

OLD DISPOZ-A-LAMP DISCONTINUED

Because quality of product has deteriorated from our supplier in France, we are taking this product off sale. It has always been the intent of your company to bring the finest quality and most up-to-date product to market. Old Dispoz-a-lamp fits neither of these objectives.

Dispoz-a-lamp Mark IV is the ideal replacement and most distributors have changed their orders.

Mark IV Dispoz-a-lamp has the ultimate in design, the vibrant colors most appealing to the woman shopper. Mark IV is a high intensity lamp, capable of throwing a beam 100 yards or more. The pistol grip is unique. The #1440 display is a winner all the way.

Most Important - The Mark IV has the most phenomenal track record any flashlight could ever hope to achieve - "A Complete Sell-Out" - within 6 weeks of its introduction. We have, and I know you have been swamped with requests from your accounts to ship Mark IV.

Caldors - The Stamford based discount chain of 22 stores just placed an order for 3,000 dozen to be delivered in May.

The conversion of your accounts from Dispoz-a-lamp to Mark IV absolutely should be a very easy job.

Sell Now against March 15th shipping date...Distribution made in April and May will be kicking off the outdoor season of camping, boating and general outdoor life.

DH:md

~~WEK~~
~~CRP~~
Files
177-10

DEFENDANT'S EXHIBIT F.

April 4, 1975

James G. Foley, Esq.
Pennie & Edmonds
330 Madison Avenue
New York, New York 10017

Re: Garrity v. Societe Les Piles Wonder

Dear Jim:

As I told you on the telephone this morning, Garrity Industries, Inc. has no records evidencing any returns of Dispoz-a-Lamps enclosing one dollar pursuant to its guarantee contained on the blister packaging since apparently there were no such returns.

I understand that no one from your office or from Tom Flaherty's office will represent the defendants at the deposition of Joseph Glazer in Miami on April 18, 1975. Since due notice of the deposition was given to you and since Mr. Glazer has been subpoenaed, we shall proceed with the deposition in any event and shall forward you a copy of the transcript.

Sincerely yours,

JMS:sd

DEFENDANT'S EXHIBIT G-1.

LES PILES WONDER

SOCIETE ANONYME AU CAPITAL DE 24.360.000, F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Telephone : 070 11 03
ADR TEL : PILWONDER PARIS
TELEX : 29 349 WONDER STOEN

Chèques Postaux : PARIS 1363 03
R C Seine 65 B 9311
N° INSEE : 357 93 070 1003 Y

SAINT-OUEN, le 30 MARS 19 72

GARRITY INDUSTRIES
20 GArland Drive
STAMFORD
(CONN. 06907)
USA

DOIT

TRANSITAIRE : FATTON BRON

Réf. RY/DI MS

V/ordre 30/3/72

N° de Compte : 400-00II

Notre N° de Commande 72.0343

ZONE : 6

N° de facture : 2357

Représentant SR

Cde passée le 30/3/72

CONDITIONS DE VENTE : FOB LE HAVRE

Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT I20 DAYS END OF MONTH OF INVOICE

EMBALLAGE MARITIME

TARIF PE 6

PRIX : HT

Parité : I

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR Unité	TOTAL
76.608	Flashlights 4 colors	DISPO	I45g	I,20	9I.929,60
I.064	Cardboard boxes containing each 72 flashlights			I0,008	I0.648,5I
					I02.578,II

BANQUE DOMICILIATAIRE
CREDIT LYONNAIS
46 Avenue Gabriel Péri
93 SAINT OUEN
N° Mle 1644

VOIR AU DOS DÉTAIL DE L'EXPÉDITION

100 09

02337

DEFENDANT'S EXHIBIT G-2.

LES PILES WONDER

(SOCIÉTÉ ANONYME AU CAPITAL DE 24.352.000 F)

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Téléphone : 076 11 03
ADR. TÉL. : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOEN

Chèques Postaux : PARIS 1353 03
R. C. Seine 55 B 9311
N° INSEE : 257 93 070.1003 Y

SAINT-OUEN, le 30 MARS 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
(CONN.06907)
USA

DOIT

TRANSITAIRE : FATTON - BRON

Réf. RY/DI MS V/ordre 30/3/72 N° de Compte : 400-0011 Notre N° de Commande 72.0342

ZONE : 6 N° de facture : 2358 Représentant SR Cde passée le 30/3/72

CONDITIONS DE VENTE : FOB LE HAVRE. [illegible] Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT : 120 DAYS END OF MONTH OF INVOICE

PRIX : HT
Parité : I

EMBALLAGE : MARITIME TARIF : PE 6

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR Unité	TOTAL
17.064	Flashlights White	DISPO	145g.	1,20	20.476,80
237	Cardboard boxes			13,824	3.276,29
	containing each 72 flashlights				
					23.753,09

BANQUE DOMICILIATAIRE

CREDIT LYONNAIS
46 Avenue Gabriel Péri
93 SAINT OUEN
№ Mle 5644

. VOIR AU DOS DÉTAIL DE L'EXPÉDITION

DEFENDANT'S EXHIBIT G-3.

LES PILES WONDER

SOCIÉTÉ ANONYME AU CAPITAL DE 24.350.000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Téléphone : 076 11 03
ADR. TÉL. : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOEN

Chèques Postaux : PARIS 1363 03
R. C. Seine 55 B 9311
N° INSEE : 287930700I003 Y

SAINT-OUEN, le 21 AVRIL 4 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
(CONN.06907)
USA

DOIT

TRANSITAIRE : STE DE TRANSIT FRANCE OUTRE MER 45 Avenue du Roule 92 NEUILLY

Réf.	RY/DI MS	V/ordre	30/3/72	N° de Compte :	400-00II	Notre N° de Commande	72.0344
ZONE :	6	N° de facture :	2324	Représentant	SR	Cde passée le	30/3/72

CONDITIONS DE VENTE : FOB LE HAVRE

Monnaie de Facturation : FRANCS FRANCAIS

CONDITIONS DE PAIEMENT : I20 DAYS END OF MONTH OF INVOICE

EMBALLAGE : AVION

TARIF : PE 6

PRIX : HT
Parité : I

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR : Unité	TOTAL
94.464	Flashlights 4 Colors	DISPO	I45g.	I,200	II3.356,80
I.3I2	Cardboard boxes containing each 72 flashlights			I0,008	I3.I30,49
					I26.487,29

BANQUE DOMICILIATAIRE
CREDIT LYONNAIS
46 Avenue Gabriel Péri
93 SAINT OUEN
Nº Mle 5644

VOIR AU DOS DÉTAIL DE L'EXPÉDITION

100108

DEFENDANT'S EXHIBIT G-4.

LES PILES WONDER

SOCIETE ANONYME AU CAPITAL DE 24.360.000 F.

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Telephone 076 11-03
ADR TEL : PILWONDER PARIS
TELEX : 28 348 WONDER STOEN

Cheques Postaux PARIS 1363 03
R C Seine 55 B 9311
N° INSEE 29/93 070 1003 Y

SAINT-OUEN, le 21 AVRIL 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
(CONN.06907)
USA

DOIT

TRANSITAIRE :

Réf. RY/DI NS

V/ordre

N° de Compte : 400-00II

Notre N° de Commande 72.03

ZONE : 6

N° de facture : 2325

Représentant SR

Cde passée le

CONDITIONS DE VENTE :

Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT I20 JOURS FIN DE MOIS DE FACTURATION
I20 DAYS END OF MONTH OF INVOICE .

EMBALLAGE :

TARIF : PE 6

PRIX : HT
Parité : I

QUANTITE	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR UNITE	TOTAL
5.840	Displays containing each I2 flashlights			0,84	4.905,60
5.840	Protection for each display			0,I8	I.051,20
					5.956,80
	BANQUE DOMICILIATAIRE CREDIT LYONNAIS 46 Avenue Gabriel Péri 93 SAINT OUEN Nº Mle 5544				

VOIR AU DOS DÉTAIL DE L'EXPÉDITION

DEFENDANT'S EXHIBIT G-5.

LES PILES WONDER

SOCIETE ANONYME AU CAPITAL DE 24 360 000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Telephone 076 11 03
ADR. TEL. : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOEN

Cheques Postaux : PARIS 1363 03
R. C. Seine 55 B 9311
N° INSEE 287 93 070 1003 Y

SAINT-OUEN, le 24 AVRIL 19 72

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
Conn. 06907
USA.

DOIT

TRANSITAIRE : T.F.O. 45, Av. du Roule NEUILLY

Réf. RY/YP
V/ordre 20/4/72
N° de Compte : 400-0011
Notre N° de Commande 72.0413

ZONE : 6
N° de facture : 2328
Représentant SR.
Cde passee le 20.4.72

CONDITIONS DE VENTE : FOB LE HAVRE
Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT : 120 JOURS

EMBALLAGE : MARITIME
TARIF : PE 6
PRIX : HT
Parité : 1

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR Unité	TOTAL
4.536	Flashlights BLEU	DISPO	145g	1,339	6.073,70
4.536	Flashlights ORANGE	DISPO	145g	1,339	6.073,70
4.536	Flashlights JAUNE	DISPO	145g	1,339	6.073,70
17.064	Flashlights BLANC	DISPO	145g	1,339	22.848,70
					41.069,80
426	Card board boxes containing cach 72 flashlights			10,008	4.263,40
2.556	Displays containing cach 12 flashlights			0,84	2.147,04
2.556	Protection for cach display			0,18	460
					43.676,92

CREDIT LYONNAIS
46, Av. G. Péri
93 SAINT OUEN

N° Mle 5644

VOIR AU DOS DETAIL DE L'EXPEDITION

DEFENDANT'S EXHIBIT G-6.

LES PILES WONDER

SOCIETE ANONYME AU CAPITAL DE 24 360.000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Telephone . 076 11 03

ADR. TEL : PILWONDER PARIS

TELEX : 28 348 WONDER STOEN

Chèques Postaux : PARIS 1363-03

R. C. Seine 55 B 9311

N° INSEE : 287.93 070 1003 Y

SAINT-OUEN, le 24 AVRIL 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
CONN. 06907
USA

DOIT

TRANSITAIRE : T.F.O. 45, Av. du Roule NEUILLY

Réf. RY/YP MD V/ordre 20.4.72

N° de Compte : 400-0011

Notre N° de Commande 72.0412

ZONE : 6

N° de facture : 2329

Représentant SR.

Cde passee le 20.4.72

CONDITIONS DE VENTE : FOB LE HAVRE

Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT : 120 JOURS

EMBALLAGE :

TARIF : PE 6

PRIX : HT

Parité : 1

QUANTITE	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR Unité	TOTAL
40.032	Flashlights 4 colors	DISPO	145g	1,339	53.602,84
	CREDIT LYONNAIS 6, Av. G. Péri 93 SAINT OUEN N° Mle 5644				

100005

VOIR AU DOS DETAIL DE L'EXPEDITIC

02331

DEFENDANT'S EXHIBIT G-7.

LES PILES WONDER

SOCIETE ANONYME AU CAPITAL DE 24.360.000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Téléphone : 076 11 03
ADR TEL : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOEN

Chèques Postaux : PARIS 1363 03
R. C. Seine 55 B 9311
N° INSEE : 287.93 070 1003 Y

SAINT-OUEN, le 24 AVRIL 1972 19

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
(CONN.06907)
USA

DOIT

TRANSITAIRE : STE DE TRANSIT FRANCE OUTRE MER,45 Avenue du Roule 92 NEUILLY

Réf. RY/DI MS

V/ordre 20/4/72

N° de Compte : 400-00II

Notre N° de Commande 72.04II

ZONE : 6

N° de facture : 2330

Représentant SR

Cde passée le 20/4/72

CONDITIONS DE VENTE : FOB LE HAVRÊ

Monnaie de Facturation Francs français

CONDITIONS DE PAIEMENT I20 Days end of month of invoice

PRIX : HT

Parité : I

EMBALLAGE : Maritime

TARIF : PE 6

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR Unité	TOTAL
93.024	Flashlights 4 colors	DISPO	I45g.	I,20	III.628,80
I.292	Card board boxes containing each 72 flashlights			I0,008	I2.930,33
7.752	Displays containing each I2 flashlights			0,84	X 6.5II,68
7.752	Protection for each display			0,I8	I.395,36
					I32.466,I7

BANQUE DOMICILIATAIRE

CREDIT LYONNAIS
46 Avenue Gabriel Péri
93 SAINT OUEN
Nº Mle 5644

La présente facture certifiée, sincère, véritable et conforme à nos livres de ventes.

VOIR AU DOS DÉTAIL DE L'EXPÉDITION

DEFENDANT'S EXHIBIT G-8.

LES PILES WONDER

SOCIÉTÉ ANONYME AU CAPITAL DE 24 360 000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Téléphone : 076 11-03
ADR. TÉL. : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOEN

Chèques Postaux : PARIS 1363-03
R. C. Seine 65 B 9311
N° INSEE : 287 93 07 01 003 Y

SAINT-OUEN, le 28 AVRIL 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD Conn. 06907
USA.

DOIT

TRANSITAIRE : T.F.O. 45, Av. du Roule NEUILLY

Réf. RY/YP

V/ordre 28.4.72

N° de Compte : 400-00111

Notre N° de Commande 72.0443

ZONE : 6

N° de facture : 2401

Représentant SR.

Cde passée le 28.4.72

CONDITIONS DE VENTE : FOB LE HAVRE

Monnaie de Facturation FRANCS FRANÇAIS

CONDITIONS DE PAIEMENT : 120 JOURS

EMBALLAGE : MARITIME

TARIF : PE 6

PRIX : HT

Parité : 1

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR : Unité	TOTAL
21.312	Flashlights 4 colors	DISPO	145g	1,339	28.536,76
1.776	Displays containing each 12 flashlights			0,84	1.491,84
1.776	Protection for each display			0,18	319,68
					30.348,28

BANQUE DOMICILIATAIRE

CREDIT LYONNAIS
46, Av. G. Péri
93 SAINT OUEN

N° Mle 5544

VOIR AU DOS DÉTAIL DE L'EXPÉDITION

DEFENDANT'S EXHIBIT G-9.

LES PILES WONDER

SOCIÉTÉ ANONYME AU CAPITAL DE 24.360.000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Téléphone : 076 11 03
ADR. TÉL. : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOEN

Chèques Postaux : PARIS 1303-03
R. C. Seine 55 B 9311
N° INSEE : 287.93.070.1003 Y

SAINT-OUEN, le 3 JUILLET 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
CONN. 06907
U.S.A.

DOIT

TRANSITAIRE : T.F.045, Av. du Roule NEUILLY

Réf. RY/YP MS V/ordre 25/5/72 N° de Compte : 400-0011 Notre N° de Commande 72.0502

ZONE : 6 N° de facture : 2500 Représentant SR. Cde passée le 25.5.72

CONDITIONS DE VENTE : FOB LE HAVRE Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT : 120 Jours - 120 DAYS END OF MONTH OF INVOICE

EMBALLAGE : MARITIME TARIF : PE 6 PRIX : HT Parité : 1

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR : Unité	TOTAL
83.520	Flashlights 4 Colors	DISPO	145g	1,339	111.833,28
6.960	Displays containing each 12 Flashlights			0,84	5.846,40
6.960	Protection for each display			0,18	1. 252,80
					118.932,48

BANQUE DOMICILIATAIRE

CREDIT LYONNAIS
46, Av. G. Péri
93 SAINT OUEN
N° Mle 5644

VOIR AU DOS DÉTAIL DE L'EXPÉDITIO

02328

DEFENDANT'S EXHIBIT G-10.

LES PILES WONDER

SOCIETE ANONYME AU CAPITAL DE 24.360.000 F

77, Rue des Rosiers, 93 - SAINT-OUEN - France

Telephone : 078 11-03
ADR. TÉL. : PILWONDER PARIS
TÉLEX : 28 348 WONDER STOUN

Cheques Postaux : PARIS 1363 03
R. C. Seine 55 B 9311
N° INSEE : 287 93 070 1003 Y

SAINT-OUEN, le 5 JUILLET 1972

GARRITY INDUSTRIES
20 Garland Drive
STAMFORD
(CONN.06907)
USA

DO

TRANSITAIRE : STE DE TRANSIT FRANCE OUTRE MER, 45 Avenue du Roule 92 NEUILLY

Réf. RY/DI MS
V/ordre 25/5/72
N° de Compte : 400-00II
Notre N° de Commande 72.0503
ZONE : 6
N° de facture : 250I
Représentant SR
Cde passée le 25/5/72

CONDITIONS DE VENTE : FOB LE HAVRE
Monnaie de Facturation FRANCS FRANCAIS

CONDITIONS DE PAIEMENT : I20 JOURS - I20 DAYS END OF MONTH OF INVOICE

EMBALLAGE MARITIME
TARIF PE 6
PRIX : HT
Parité : I

QUANTITÉ	DÉSIGNATION	TYPE	Poids Net Unitaire	PRIX PAR : Unité	TOTAL
I7.064	Flashlights White	DISPO	I45g	I,392	23.753,09
2.520	Flashlights Yellow	DISPO	I45g	I,392	3.507,84
2.520	Flashlights blue	DISPO	I45g	I,392	3.507,84
2.520	Flashlights orange	DISPO	I45g	I,392	3.507,84
2.052	Displays containing each I2 flashlights			0,84	I.723,68
2.052	Protection for each display			0,I8	369,36
					36.369,65

BANQUE DOMICILIATAIRE
CREDIT LYONNAIS
46 Avenue Gabriel Péri
93 SAINT OUEN
Nº Mle 56-4

La présente facture certifiée, sincère, véritable et conforme à nos livres de fentes.

VOIR AU DOS DÉTAIL DE L'EXPÉDITION

100001

02326

DEFENDANT'S EXHIBIT J-1.

GERMAC BONDED WAREHOUSE
Distribution and Packaging
NEW CANAAN, CONNECTICUT 06840
POST OFFICE BOX 156
(203) 933-0200

INVOICE
№ 0485

SOLD TO
Wonder Corp of America
P.O. Box 1204
Darien, Ct. 06820

A. Rodriguez

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
7/31/73				Net 30			

DATE SHIPPED	SHIP VIA	F.O.B.

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
	Labeling Cases with Product Code			
	Label Printer Rental 3 Months	66.50	mo	199.50
	Stenmark Machine Rental 3 Months	39.50	mo	118.50
	6 Rolls Pressure Sensitive Paper	25.99	roll	155.94
	1 Bottle Ink	8.20		8.20
	Inspection of Garrity Flashlights 17869	.0567		1013.17
				1495.31

FTD & EXT.	CK. NO.	MDSE. REC'D
	CK. DATE	
ACCT. NO.	**UNIT PRICE**	**APPR. FOR PAYMT**
~~129~~	~~485.14~~	
158	[illegible]	

FLASH FORM

DEFENDANT'S EXHIBIT J-2.

GERMAC COMPANY
Packaging & Distribution
POST OFFICE BOX 156
NEW CANAAN, CONN. 06840
(203) 846-9500

INVOICE

[illegible]	CK. NO.	MDSE. REC'D.
	CK. DATE	
ACCT. NO.	[illegible]	APPR. FOR PAYMT
128 158	2630.42 2037.63	

SOLD TO
WONDER CORPORATION OF AMERICA
P.O. BOX 1204
Darien,Conn 06820

A.RODRIGUEZ

SHIP TO

INVOICE DATE	OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD	PPD & ADD	COL-LECT
9-29-73				net 30			
DATE SHIPPED	SHIP VIA			F.O.B.			

QUANTITY	DESCRIPTION	PRICE	PER	AMOUNT
42,013	COMPLETE GARRITY INSPECTION	.0485	ea	$2037.63
24,601	RALLY INSPECTION(BOXED)	.0362	ea	890.56
29,946	RALLY INSPECTION (DISPLAY)	.0184	ea	551.01
4,699	RALLY PACKAGING IN TOM WATT CARRY CASES STICKERS,NEW CARTON,INSPECT.	.253	display	1188.85
				========== ========== $4,668.05

FLASH FORM

DEFENDANT'S EXHIBIT K (PAGES 589a TO 590a).

INVENTORY 11 September 73 PAGE 1 of 2

Re-issue: 19 Sept. 1973

SHEET NO. Quality Rejects PRICED BY

CALLED BY Wowder DEPARTMENT EXTENDED BY

ENTERED BY D Rush LOCATION Germac Norwalk EXAMINED BY

CHECK	P/N	QTY	~~[illegible]~~	%	✓	PRICE	UNIT	EXTENSIONS
	0032	1665						
	0161	14259		~~[illegible]~~ 23.6				
	0297	972						
	0306	507		0.8				
	0496	2097						
	0505	2630						
	0534	204						
	0733	1454						
	0762	449						
	0795	1913						
	0903	2814		4.7				
	0932	649						
	0961	1733						
	1425	814						
	[illegible]24	1804						
	1653	285						
	1852	2357						
	1923	438						
	1952	154						
	1953	84						
	2079	895						
	2136	102						
	2249	293						
	2316	[illegible]						
	2416	[illegible]						
	2544	488						
	2615	530						
	2644	2535						

AMOUNTS FORWARD

590a

INVENTORY 11 SEPTEMBER — PAGE 2 of 2

SHEET NO. GARRITY REJECTS — PRICED BY

CALLED BY WONDER — DEPARTMENT — EXTENDED BY

ENTERED BY D. RUSH — LOCATION GERMAC NORWALK — EXAMINED BY

CHECK	P/N ~~QUANTITY~~	QTY.	DESCRIPTION	%	✓	PRICE	UNIT	EXTENSIONS
	2674	1016						
	2774	227						
	3027	49						
	3137	107						
	3207	891						
	3406	2556						
	3435	1629						
	3635	913						
	UNKNOWN	1572		2.6				
*	GOOD	~~[illegible]~~ 5829		~~[illegible]~~ 9.7				
	TOTAL	~~[illegible]~~ 59,882						
	QTY. CTN	~~[illegible]~~ 326						
	WT	20,599 ~~[illegible]~~	# NET @ .344 # EA. UNIT					
	WT	~~[illegible]~~ 21,170	# GROSS @ 1.75 # EA. CTN					

* CORRECTION DATED 9/19/73 to ORIGINAL REJECT INVENTORY OF 9/11/73
ADD 209 UNITS to "GOOD" QUANTITY WHICH AFFECTS TOTAL QUANTITY, PERCENTAGES & WEIGHTS AS NOTED ABOVE.

AMOUNT FORWARD

DEFENDANT'S EXHIBIT L.

wonder
Corporation of America

Mark Sternlicht
President

1082 Post Road Darien, Conn. 06820
P.O. Box 1204
Tel.: 203/655-7431
Telex 955958
Cable Add.: WONDERUSA

November 29, 1972

Mr. Paul Garrity
GARRITY INDUSTRIES
20 Garland Drive
Springdale, Connecticut

Dear Paul :

I've called you several times to arrange for a meeting, but I understand you are involved in a busy sales meeting schedule.

I have reviewed the defective situation in France, and have with me samples of the way we propose to remedy the defect, which I would like to review with you.

I will be available Friday morning (December 1), Monday morning and the balance of next week beginning Wednesday (December 6).

Best regards.

Sincerely,

WONDER CORPORATION OF AMERICA

Mark Sternlicht ldr

MS:dlr

United States Affiliate of Société Les Piles Wonder, Saint-Ouen, France

DEFENDANT'S EXHIBIT S.

wonder
Corporation of America

Mark Sternlicht
President

1082 Post Road Darien, Conn. 06820
P.O. Box 1204
Tel.: 203/655-7431
Telex 965868
Cable Add.: WONDERUSA

January 11, 1973

Mr. Paul Garrity
President
GARRITY INDUSTRIES
20 Garland Drive
Springdale, Connecticut

Dear Paul:

Pd in as Dollar //

We have been notified by France recently of a discrepancy in the exchange rate which was used in paying the invoices 2113, 2114, 2142, 2143, 2144, 2163 and 2255. These invoices, total FF 96,427.32 were paid using the rate of $1 = 5.00 FF. The actual exchange rate which we can convert these to U.S. dollars is $1 = 5.75 FF. Therefore, there is still an outstanding balance of FF 12,553.92 or $2,510.78 on the above invoices.

We would appreciate your attention to this discrepancy, and to avoid future misunderstandings, please instruct your bank to pay Wonder France in French francs.

Regards.

Sincerely yours,

WONDER CORPORATION OF AMERICA

Sternlicht For

Mark Sternlicht

23078
17491
784.87

MS:dlr

[illegible]

Copy Received
March 1, 1977
Remme & Edmond,
atty for appellee.

BEST COPY AVAILABLE